

A
SUPPLEMENT

By way of

ADDITIONS to, & AMPLIFICATIONS of the foregoing

Treatise,

CONCERNING

Copy-hold and Customary
ESTATES:

Wherein the Grounds laid down in
the said *Treatise* are made good and confirmed by several Resolutions and Judgments given in the Courts of the Common Laws of *England* in divers Cases.

L O N D O N,

Printed by *E. Fleisher, John Streater*, and
Henry Twyford, Assignes of *Richard Atkyns*, and
Edward Atkyns, Esquires. 1673.

Cum gratia & privilegio Regiæ Majestatis.

SUPPLEMENT

TO THE

THEORY

OF THE

STATES

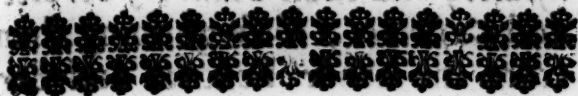
OF THE

UNION

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THE INTRODUCTION.



HE Learned Au-
thour of the before-
going Book, intituled,
The Compleat Copy-holder, having
in a very compendi-
ous manner treated of the Original
of *Manors*, and how constituted;
and of their *Demefn Lands*,
as also of the several *Tenancies*
thereof, and of the nature of the
Services, *Qualities*, and *Courts* in-
cident and belonging thereunto;
and (amongst the rest) of *Copy-
holders*, *Copy-holds* and *Customary*
A *Estates*,

The Introduction.

Estates, and their *Tenures*, *Services* and *Customes*, distinguishing them from the other *Tenures* and *Services*; setting forth therein likewise the Antiquity and Original of *Copy-holds*, the *Services*, *Duties*, and other things incident to such *Tenure*; with divers *Customes*, *Prescriptions* and *Usages*, claimed by such *Copy-hold-Tenants*, together with the manner of *Grants* and *Estates* thereof, and how and in what manner they are either to be granted or accepted of: Now because the drift of the Authour of the said Book was (as I conceive) to speak more particularly of *Copy-hold* and *Customary Estates* than of the other *Tenures*; and therefore the Authour of the said Book hath therein laid down some general Grounds concerning the same, but hath not confirmed them either by *Judgments* or *Precedents* of the *Common Law*, which would have

The Introduction.

have more illustrated the same; and some things likewise concerning *Copy holds* and *Customary Lands* and *Estates* have been omitted by the said Authour worthy to be known by all Students and others whom the same may concern: therefore at the request of divers persons, by way of *Amplification* of what hath therein been formerly treated of by the said Authour, and by way of *Addition* of what therein hath been omitted, I have added what hereafter followeth by way of *Supplement* to the former Book; wherein I shall endeavour to contribute somewhat *de novo*, and to make good the former Grounds laid down in the said Book, and what shall be added thereunto, by several *Resolutions* and *Judgments* given in the Courts of the *Common Laws* of *England* in several Cases concerning the same.

The Introduction.

And therefore *Surrenders* (after a Grant thereof made) being one of the principal matters which do concern *Copy-holders* and their *Estates*, I shall first begin with them, and then proceed to other matters concerning *Copy-holders* and their *Customary Estates*.

Sect-



SECTION I.

What a Surrender of Copy-hold or Customary Estate is; to whom, and in what manner and place it is to be done; and who shall be said such a Tenant of a Copy-hold as may make such a Surrender.



Surrenders of Copy-hold-lands and Copy-holders are of two sorts; viz. Surrenders Actual, and Surrenders in Law.

An Actual Surrender, according to the Definition of Mr. Littleton, and the best Description of it, is a Copy-holder's yielding up of his Copy-hold-lands or Customary Estate into the hands of the Lord of the Manor, in the Court of the Manor, or unto his Bailiff, Reeve, or Steward, to such Uses and

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for such Estates as are particularly mentioned in the Surrender it self, made by a Deed or Writing; or if it be by Word, in the presence of the Lord and Tenants in the Court of the Manor. And yet it hath been a great doubt and Question, whether of Copy-holds or Customary Estates, any words used to the Lord himself shall amount to make it a good Surrender.

Proof.

Litt. 15. b.
Book of En-
tries, 131.
acc.

Vide Mr. Littleton, in his Chapter of Tenant by Copy, &c. fol. 15. Ad hanc Curiam venit A B, & sursumreddidit in eadem Curia in manus Domini, &c. unum Messuagium, &c. ad usum C D. & hereditum suorum, &c.

But if the Surrender be made in Court into the hands of the Lord or his Steward, it must be to such a person or his Use who is *in esse* and capable of such a Surrender, or that may take Presenty by force of the Surrender; otherwise such Surrender, though it be an Actual Surrender made in the Court of the Manor to the Lord or Steward himself, is not good.

A Copy-holder in Fee surrendered his

his Copy-hold-lands into the hands of the Lord of the Manor, *Habendum* after his decease to the Use of an Infant in *Ventre sa mier*, and if the said Infant died within age, then to the Use of *J S* and his Heirs. In this Case these Points were Resolved. 1. If a Copy-holder in Fee

H. 7 Jac.
B. R. Simpson and Southern's Case.
H. 17 Jac.
in B. R. Bambridge and Whitton's acc.

doth surrender his Copy-hold-lands into the hands of the Lord, to the Use of himself and his Heirs, That in that Case, because the Limitation of the Use to him who had it before was void, the Surrender thereof to the Lord himself was also void.

2. That the Surrender made to the Infant in *Ventre sa mier* was not good as an immediate Surrender, and to take effect immediately, as the intention of the Surrenderer was it should, because it was of a Free-hold, which could not begin at a day to come.

But yet *Quere*, If the Surrender be made into the hands of the Lord, to the Use of the right Heirs of the Surrenderer, if the Lands shall not continue in the hands of the Lord till the Death of the Copy-holder who made the Surrender, for the Court doubted of it, *Pasc. 30 Eliz.* in *Allen and Palmer's Case*.

Vid. P. 30
Eliz. Allen and Palmer's Case. Leon. Part I. 101.

A Surrender being then by the Copy-holder

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holder himself, in the Court of the Manor, to the Lord, of his Copy-hold or Customary Lands; if then, upon the very Act done, the Estate be in the Lord, or in the Surrenderer, or in whom it resteth, remaineth a Doubt. For Resolution thereof, I humbly conceive the Law to be, and so it hath been Resolved, That notwithstanding such a Surrender made, yet the Estate remaineth in the Copy-holder who surrendreth, and is not in the Lord, or in any other person whatsoever. But in case where the Copy-holder doth surrender his Copy-hold in the Court of the Manor to the Use of the Lord himself, (which he may doe) there, by such a Surrender, the Land is immediatly vested in the Lord without any other Act done or required, because the Lord cannot take a Surrender, as to make thereof an Admittance unto himself.

And to that purpose *Vide Erish* and *Rive's Case*, where it was Resolved, That if a Surrender be made by a Copy-holder of his Copy-hold-lands into the hands of the Steward of the Manor to the Use of the Steward himself, that Surrender is good without any farther Act, for the reason aforesaid.

Vid. Cro.
part 1. in
Erish and
Rive's Case,
acc.

Having

Copy-hold and Customary Estates.

Having thus shewed what will be a good Surrender of Copy-hold or Customary Lands by an actual Surrender in the Court of the Lord of the Manor, I shall now consider

S E C T. II.

Whether a Copy-hold may be said to be surrendered by any Act, Words, or Agreement, made betwixt the Lord and the Copy-holder, or by the Copy-holder with a Stranger made in the Court, in the Presence of the Lord or his Steward.

I Do conceive generally, that no Act or Words of the Copy-holder can pass his Copy-hold in such a manner, as that the same shall be accounted to amount to a good Surrender of the same. But yet it rests upon a Difference.

*Vid. Leon.
1. part, 172.
Pembroke,
and New-
mar's Case.*

Proofs.

If a Copy-holder bargain and sells his Copy-hold by Deed of bargain and Sale enrolled, though it be to the Lord of the Manor himself, it is void, and shall not amount to a Surrender.

If

If Tenant for life of Lands at the Common Law agrees with his Lessor, or him in the Reversion, that he shall have his Interest in the Land for the Rent of 20 *s. per annum*; this Agreement will not amount to a Surrender of his Land by the Common Law. *A fortiori*, If a Copyholder, or other Customary Tenant, shall say to his Lord, or other person in the Court of the Manor, I agree to surrender my Lands; these words will not be a present or an express Surrender, nor will they amount to so much as a Relinquishing of his Estate: for in truth it is not any thing in present, but an Act to be done *in futuro*; Like unto the Case put by *Wray* Chief Justice; *A* seised of the Manor of *D* demiseth the same Manor at will; that it is no Lease. No more in the other Case shall it be a Surrender, or a Relinquishing of his Copy-hold or Copy-hold-estate. But yet notwithstanding it will be agreed that in some cases an express and particular Agreement made by a Copy-holder with the Lord of the Manor for or concerning his Copy-hold-lands will amount to a Surrender of the same.

The Case was, That the Lord of a Manor, pretending that a Copy-holder had

*Tr. 31 Eliz.
in B. R.
Sweeper and
Randal's
Case, Leon.
1 Part, 178.*

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had forfeited his Copy-hold-lands, entred into a Communication with the Copy-holder concerning the same : Upon the Communication thereof had betwixt them, it was agreed, that the Copy-holder should pay unto the Lord the summe of 10 l, which he paid accordingly ; and that in consideration thereof, the Copy-holder should have Election, whether he would have the Land assured unto him by Copy or by Bill, for the life of him and his Wife, or *durante viduitate* of the Wife; who made his Election to have the Land by Bill. It was the opinion of the Justices in that Case, That this Agreement was a good Surrender of the Lands, and a good Estate thereupon vested in the Wife for her life.

M. 32 Eliz.
in Co. B.
Collam and
Sir Hugh
Portman's
Case, Leon:
1 part, 191.

A Copy-holder in Fee came into the Court of the Lord of the Manor, and took a new Estate of his Copy-hold-lands from the Lord to himself for life, and afterwards to his Wife for life, and after to his Son for life. It was a Question, whether this Act of the Copy-holder was the giving up and the relinquishing of his Estate of Inheritance in his Copy-hold, and did amount to a Surrender of his old Estate therein. It was agreed

M. 13 Jac.
B.R. Berfield
and Adams
Case.

*Vid. 29 Eliz.
Co. 2. part,
Lane's Case.*

agreed in this Case, That if a Copy-holder of inheritance takes a Lease by Indenture for years of the Lord of his Copy-hold, that by that Act of his his Inheritance in his Copy-hold is gone and determined. But it seemed to be the better opinion of the Court, That although that this taking of a new Estate shall imply a Surrender, and be accounted as to some purpose to amount to a Surrender; yet in the judgment of Law it shall be but as a Surrender to his Use for life, and after to his Wife and Son for their several lives, and that still the Inheritance of the Copy-hold remains in him. But *Quare* this Case. For that *H. 36 Eliz. in Co. B. Rot. 2640.* in *Adams* and *Shepheard's Case*, it seemeth to be adjudged to the contrary.

*Vid. Colman
and Bedill's
Case, An-
derson's Re-
ports 199.
acc.*

A Copy-holder said to his Lord, that he would not hold his Land longer by Copy, but by a Bill under the Lord's hand for his life, who made him such a Bill, which the Copy-holder accepted of. It was agreed by the Justices in that Case, That hereby his Copy-hold was determined.

SECT. III.

Of Surrenders out of Court; and where Surrenders to the Steward, Deputy-steward, or into the hands of Tenants of the Manor, out of Court, shall be good, where not.

BY the general Custome of the Realm a Copy-holder may surrender his Lands in the Court of the Lord of the Manor, or out of Court, to the Lord, by the hands of Tenants of the Manor: But a Surrender out of Court to the Lord, or by the hands of Tenants of the Manor, or of the Bailiff or Reeve, is not good without a special Custome.

The Lord hath such an absolute Interest in his Manor, that he may hold a Court within his Manor at what time he pleaseth: But he is not compellable by his Copy-holder to hold or call a Court to accept of a Surrender. But if he doth accept of such a Surrender of his Copy-holder out of Court, the same is good, whether it be to his own Use, or to the Use of other persons. And as the Lord may himself accept of a Surrender out
of

of Court, so likewise may the Lord himself grant new Copies of the Lands out of Court, and such Grants shall be good. But the Lord himself cannot hold his own Court for any of the purposes aforesaid. But the Lord himself may give authority unto others to take Surrenders to the Use of others out of Court; and so may his Steward or Under-steward give Conditions to others to take the like Surrenders out of Court to other Uses, which Conditions shall be in the nature of a *Dedimus potestatem*. And so it was Resolved in a Case out of Ireland, referred to the Judges of England, to certify their opinions therein; where the Case was, The Steward of the Court of a Manor in Ireland, being in England, sent a Writ in the nature of a *Dedimus potestatem* to one who was in Ireland, to take a Surrender there of Copy-hold-lands: and the opinion of the Judges here, to whom the Case was referred to advise and certify their opinions, was, That such a Surrender taken by *Dedimus* was good enough. But note, that in such case it must be intended, that such giving power to take a Surrender, if it be to be done, it must be alledged to be done either by Prescription or Custom:

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stome: for that Surrenders generally taken out of Court must be by Custome.

Proofs.

If the Under-steward hold a Court within the Manor, and grants Copies by Court-Roll, without the authority of the Lord or of the high Steward, the Grants are good. But contrary it is, if he doe it out of Court, as it seemeth. And there it is a *Quare*, if the high Steward out of Court may grant Lands by Copy. But it is clearly holden, that he cannot admit a Copy-holder upon a Surrender out of Court, without a special authority from the Lord so to doe.

2 E. 6. Br.
Tenant per
Copy 26.

A Deputy-steward may take a Surrender out of Court, if the Office be granted to the Steward and his sufficient Deputies, or to be exercised by him and his sufficient Deputies; as it was Resolved 19 Eliz. in the Court of Common-Pleas.

19 Eliz. in
Co. B.

The Lord of a Manor may retain a Steward by Word, and such a Retainer shall be good untill he be discharged, and such a Steward may take a Surrender out of Court, as it is holden in *Coke* 4. part, in the Lady *Holcroft's* Case. And so was it Resolved Tr. 41 Eliz. in *Harris* and *Jaye's* Case.

8 Eliz. Dyer
248.

Co. 4. part,
Holcroft's
Case.

*Tr. 31 Eliz.
C. B. Blagrove and
Wood's Case,
Godb. 142.*

Jaye's Case in B. R. But *Quere* of the fifth Point. For that *Tr. 31 Eliz. in Co. B. in Blagrove and Wood's Case*, the opinion of the Justices was, That a Surrender to a Steward who was by word onely, out of Court, was not good.

*M. 17 Eliz.
in C. B. by
Dyer and
Mounson.*

In *17 Eliz. in Co. B.* it was said by *Dyer and Mounson*, That without a Prescription a Surrender of Copy-hold-land could not be out of Court, nor an Admittance out of Court, neither to the Lord himself nor to his Steward. But in divers places it is used by Custome so to be. And then and thereupon the doing of Fealty and the paying of the Lord's Fine shall be presented by the Homage to be done at the next Court. And all these things they said are to be done by Custome. And in that Case it was said by the Lord *Dyer*, That a Surrender out of Court might be to the Lord himself, to go by the way of Extinguishment.

A Copy-holder in Fee did, according to the Custome of the Manor, surrender his Copy-hold-lands into the hands of two Tenants; but the Surrender was to the Use of *J. S.*, to take effect immediately after his death. In this case it was Resolved, That as unto the Surrender into the hands of

of two Tenants, that might be good, although it was out of Court, by Custome. But because in that Case the Surrender was unto the Use of *J S*, to take effect immediately after the death of the Surrenderor, and a Free-hold cannot begin *in futuro*, or at a day to come, by the Common Law, and for that the Estates of Copy-holders shall be directed according to the Rules of the Common Law; for that cause only the Surrender was holden to be void.

But although a Surrender out of Court may be good into the hands of Tenants of the Manor by Custome; yet until such Surrender be presented by them in the Court of the Lord of the Manor, the Estate of the Lands doth remain in the Surrenderor, and nothing passeth thereby.

A Copy-holder in Fee did surrender into the hands of two Tenants, according to the Custome, to the Use of *A* and *B*, who thereupon entred into and upon the Lands, and paid the Rent to the Lord; but before any Court was kept for the Manor, the Tenants to whom the Surrender was made, as also the Copy-holder the Surrenderor, all of them died, and thereupon the Heir of the Copy-holder

*M. 14 Jac.
B.R. Frof-
well and
Wellshe's
Ca's, Bridg-
man 52.*

B

Sur-

Surrenderor entred upon the said *A* and *B*, and made a Lease for years of the Lands, which Lease was warranted by the Custome. In that Case it was Resolved, That the Lease for years was well made, because that before such time that the Presentment was made in Court of the Surrender, the Interest of the Copy-holder did remain in the Surrenderor, and his Right descended unto and upon his Heir, and he might take and receive the Rents and Profits of the Lands; for that no Person can have a Copy-hold, or a Copyhold-Estate, but such a person who comes into the same by the Custome of the Manor, viz. by Admittance of the Lord, which in this Case *A* and *B* did not do. But in that Case it was doubted by the Justices, but not Resolved, Whether the Acceptance of the Rent by the Lord at the hands of the said *A* and *B* did amount to an Admittance or not.

*M. 9 Jac.
Cro. 2. part,
Porter and
Porter's
Case.*

There were two Joynt-tenants in Fee of Lands which were holden by Copy. One of them, according to the Custome, surrendered into the hands of two Tenants to the Use of his last Will, and afterwards he made his Will, and thereby devised the Lands, In that Case it was holden by

by the Justices, That because the said Surrender was presented by the Tenants in the Court of the Lord, that the said Surrender should bind the Survivor; for that it shall have a relation to the first time of the Surrender. But if in that case the Copy-holder who made the Surrender had died before the same had been presented, then the Copy-hold had survived to the surviving Joynt-tenant.

Two Coparcenors, Copy-holders, were in possession; the one did surrender her Reversion in the Moyety after her decease. It was adjudged a void Surrender, because a Free-hold could not commence *in futuro*, as well of Copy-hold-lands as of Free-hold-lands.

*P. 10 Jac.
B.R. Godb.
141.*

A Copy-holder surrendered a Messuage and 20 Acres of Lands into the hands of two Tenants out of Court, to the Use of *J S* and his Heirs, upon Condition, that if he paid *J S* 100 *l.* before such a day, the Surrender to be void. Before the day of payment he surrendered one Acre, parcel of the 20 Acres, unto *J D* and his Heirs, and afterwards he performed the Condition by paying the 100 *l.* and afterwards in Court he surrendered the said Messuage and 20 Acres of Lands in-

*M. 8 Jac. in
B.R. Cro. 3.
part, Bur-
goyne and
Spurling's
Case.*

to the hands of the Steward, to the Use of *J N* and his Heirs. It was found by the Jurours that the first Surrender made to *J S* was never presented, but the two last Surrenders were presented. In this Case it was Resolved, That by the Conditional Surrender nothing passed, until it was presented ; but the Interest, Right and Possession remained in the Copy-holder who made the Surrender, so as he might transfer it to whom he thought good. For although it was a Surrender into the hands of Tenants, and so according to the manner of the Surrender the same was good by the Custome; yet because the said Surrender into the hands of Tenants was but an Inchoation of the Case to whose Use the Surrender was made, which had no farther perfection or prosecution, but became void by the performance of the Condition, the first of the two last Surrenders presented, *viz.* the Surrender to the Use of *J D* and his Heirs, stood good, and the last Surrender to the Use of *J N* and his Heirs took no effect.

*Coke 9. part 5
Comb's
Case.*

A Copy-holder in Fee made a Letter of Attorney to two Tenants of the Manor, to surrender his Copy-hold out of Court

Court to the use of *J S* and his Heirs : They surrendered the same accordingly, and at the next Court brought in the Surrender into Court, (but no Custome was found to warrant such a Surrender.) Notwithstanding in that Case it was Resolved, 1. That it was a good Surrender, because he might do it *de communi jure* without alledging any Custome. 2. When the Tenants shewed the same in Court, and the Authority which was given to make the Surrender, all which they had done was Resolved to be good, and legally done.

SECT. IV.

Where, although Surrenders are made to the Lord or to Tenants out of Court by Custome, yet nothing passeth out of the Copy-holder before Admittance : And what shall be a good Admittance in such case, what not.

Admittance is the life and perfection of the Copy-holder's Estate, and before Admittance the Tenant is not a perfect Copy-holder.

Proofs.

M. 23 Car.
B.R. Baker
and Den-
ham's Case.

The Custome of a Manor was, That a Copy-holder might surrender his Copy-hold out of Court to the Use of another; the party to whose Use it was, to be admitted at the next Court. Such a Surrender was made, but before the next Court *Cestuy que use* died, and so was not admitted. It was Resolved in this Case, That he was not a Copy-holder within the Custome; for by the Surrender before Admittance the Surrenderee hath no possession, and the Heir is in by Discent, and holds by the Copy of his Ancestor, and so the *Cestuy que use* is not a perfect nor compleat Copy-holder. And it may be compared to the Case where a man makes a Feoffment in Fee of Lands, and makes Livery within the View; it is no perfect Livery till he doth enter into the Lands, but the Feoffor may punish a Trespass there done in the interim, for it is but *inchoatum* until he enter. And so it is in case of a Copy-holder; the Surrender is but *quasi inchoatum*, as before, till he be admitted to the Copy-hold. *Vid. Fros-wei's Case before.*

In

In 26 *Eliz.* the Question was, Whether the Copy-holder might have an Action upon the Case against the Lord for not holding his Court, and not admitting of him to whom a Surrender was made according to the Custome of the Manor. It was Resolved in that Case, That the Copy-holder himself might have the Action. But in that Case it was Resolved, That he to whom the Surrender was made, until Admittance, by force of the Surrender had nothing; it was onely an Act begun, and not perfected; and therefore in such case he could not maintain the Action of the Lord for not admitting of him.

26 *Eliz. Gal-*
loway's Case
vouched in
Bulstr. 3.
part, 217.

A Surrender of a Copy-hold is like to the Induction into a Benefice: before Induction there is no Possession; so before Admittance there is no Possession.

A Copy-holder, according to the Custome, did surrender out of Court into the hands of Tenants to the Use of *J S* and his Heirs; which Surrender was delivered into the Court by the said Tenants and there presented; which was accepted of by the Steward of the Manor, and an Entry made thereof in the Court-Roll, and a Copy of the Surrender was

M. 12 Jac.
Robinson and
Green's Case,
Bridgman
82, 83.
Bulstr. 3.
part, 238.
2cc.

delivered unto *J S*; and in the Copy it was, *viz. Compertum est per Homagium*, that the Surrender was to *J S* and his Heirs. It was the opinion of the Court in this Case, That none of these colourable things did imply a perfect Admittance to the Copy-hold. For 1. The Acceptance of the Presentment by the Steward from the Homage was no more than what he was bounden to do as being Judge of the Court. 2. The Entry of it in the Roll was but an Office of Duty, being but an Evidence for the Lord, as also for him to whose Use the Surrender was; and so was the delivery of the Copy to *J S*, the *Cestuy que use*. But none of these things did imply the Consent or Will of the Lord, that the *Cestuy que use* should be admitted or have the Lands according to the Surrender; and all these things together do not imply any Admittance, for all of them may be done, though no Admittance be in the case.

*M. 6 Jac. in
B. R. Wilson
and Wed-
dall's Case,
Yelv. 144.*

Note, It was Resolved in the Court of *King's Bench*, That if a Surrender be of a Copy-hold to *J S*, it is of no effect until he be admitted Tenant: and if before Admittance *J S* doth surrender the Land unto another, a Stranger, who is ad-

admitted, yet nothing passeth to the Stranger by this Admittance of the Stranger.

SECT. V.

Where some things, and what things, may be done by the Copy-holder or his Heir before Admittance.

Proofs.

1. **T**HE Heir of a Copy-holder may enter and have an Action of Trespass before Admittance. 2. A *Pos- sessio Fratris* or *Sororis* may be of a Copyhold before Admittance. 3. A Discent shall not bind the Heir of a Copy-holder. 4. He may surrender unto a Stranger before Admittance.

Co. 4. part, Clark and Penysather's Case.

A Copy-holder in Fee had Issue two Daughters by divers Women, and died seised; the Daughters entred, and took the Profits many years; and before Admittance, the eldest Daughter died without Issue, and afterwards the youngest Daughter was admitted to the whole Land, as sole Heir to the Father. In this Case it was holden, That the possession of the eldest Daughter, though before Ad-

Vid. 12 Eliz. Dyer 291.

Admittance, should make her Sister, though of the half blood, inheritable to the Land.

24 Eliz. in
Co. B. Coke
4-part, 23.
Brown's
Case acc.

If a Copy-holder in Fee by Licence maketh a Lease for years, and the Lessee entreth, the Copy-holder having a Son and a Daughter by one Woman, and a Son by another; the Land shall descend to the Daughter of the whole blood, although that the Son died, and was not admitted to the Copy-hold as Heir to his Father. And that that should be *Possessio Fratris* of a Copy-hold before Admittance.

40 Eliz. in
B.R. Arnold
and George's
Case, Telv.
16. acc.

If a Copy-holder doth surrender to a Stranger, and the Steward will not admit him, and the Stranger enters, and holds the Land; if the Lord bring Trespass against him before Admittance, he may plead Not guilty, and his Plea shall be good, and it shall be found against the Lord, because he is *particeps criminis* to the Admittance, because it shall be intended, that the Lord would not suffer the Steward to admit him to the Copy-hold.

Tr. 2 Jac.
B.R. Joyner
and Low-
ber's Case,
Cro. 2. part,
3.

A Copy-hold was seized by the Lord of the Manor, and he granted it to another in Fee, who died, and his Heir was admitted; then the first Copy-holder died,

ed, and his Heir entred, and surrendred unto a Stranger in Fee. It was Resolved in that Case, That the Entry of the Heir was lawful, though he was not admitted to the Copy-hold-estate, and the Discent of the Land to the Heir of the Grantee of the Lord should not bind him. And farther it was Resolved in that Case, That the Heir of the Copy-holder being in the Land, his Surrender of the Land unto a Stranger was good before his Admittance.

SECT. VI.

Where the Lord is but an Instrument to convey the Copy-hold by Admittance onely, and that the Surrenderer is in by the Copy-holder, and not by the Lord.

Although generally (as before is said) a Copy-holder cannot enter and have Seisin of the Land without the Admittance of the Lord, no more than a Parson or Prebend can have Seisin, or be full Incumbent, till the Arch-deacon hath inducted him, or the Dean and Chapter entalled him: yet the Lord is but an Instrument used for the settling of the Copy-

Vide Plow. Com. 241. in Hare and Bickley's Case.

py-holder in his Copy-hold, and to transfer the Land *secundum formam & effectum Sursurredditionis*, and the Estate, Right and Interest in the Copy-hold doth not pass as from the Lord; but upon the Admittance made by the Lord the Copy-holder is in by him who made the Surrender, and by the Custome, and seised of the Copy-hold *secundum Consuetudinem Manerii*, &c.

Proofs.

M. 40 Eliz.
B.R. Pay
and Brown's
Case, Cro.
1. part.

The Lord of a Manor demised Copy-hold of Inheritance to *A*, upon Condition that he should pay to *B* 20 *s.* yearly during his Minority, and 100 *l.* at his full age. *A* paid not the 20 *s.* but surrendered the Land to the Use of *P* and his Heirs. The Lord admits him. *B.* attains his full age, and the 100 *l.* is not paid. The Lord enters for the Condition broken, and grants the Land by Copy to *B.* *P* enters upon him. It was holden in this Case, That his Entry was lawful, for that he to whose Use the Surrender was made comes in by him who surrendered, and not by the Lord.

A Copy-holder in Fee surrendered his

his Lands into the hands of the Lord by the hands of the Tenants, according to the Custome, without expressing to whose Use it should be. At the next Court he was admitted *Habendum* to him and his Wife in tail. It was objected, That no Use being expressed, the Surrender was void, and the Admittance not good, to pass an Estate to the Wife not being named in the Premises; but in the *Habendum* onely. It was Resolved, 1. The Surrender was good, for it shall be intended, that the Surrender generally made was to such Use as was specified in the Admittance; and the Lord was onely as an Instrument put in trust to convey the Estate, and make such Admittance as he who surrendered would have him to make. 2. That the Wife should take by the Admittance, though she was not named in the Premises, but in the *Habendum* onely.

Tr. 15 Jac.
B.R. Brook's
Case, Foph.
125.

If a Copy-holder surrendreth his Lands to the use of *J S*, the Lord hath but a Customary power to make the Admittance *secundum effectum & formam Surrenderreditionis*. And if in such case the Lord grants the Land to *J S* and a Stranger, all shall enure to *J S*, and nothing to the Stranger. And if the Copy-holder doth

33 Eliz. Co.
4-part, West-
wick's Case.

doth surrender his Lands without a Condition, if the Lord doth admit the Tenant upon a Condition, the Condition is void; for that after the Admittance the Surrenderee is in by him who made the Surrender, and not by the Lord.

28 Eliz. Co.
4. part, *Bun-*
ting's Case.

A Copy-holder surrenders to the Use of another; the Lord admits him to hold to him and his Heirs: yet he shall have but an Estate for Life, for that after the Admittance he is in by him who made the Surrender, and not by the Lord.

Coke 8. part,
in *Swayne's*
Case.

The Custome of the Manor was, That a Copy-holder for life might take Timber to repair: The King made a Lease of the Manor, excepting Woods and Underwoods and Trees: The Lessee for years of the Manor grants a Copy-hold upon which were Timber-trees to another for life, who cuts Timber to repair. It was Resolved, That in this Case, notwithstanding the Severance and Exception, the Grantee should have the Trees, for that the Estate of the Copy-holder who comes in by a voluntary Grant is in by the Custome, and the Lord is but an Instrument to make the Grant.

Co. 4. part,
in *Tavernor's*
Case.

When a Copy-holder surrenders to the Use of another, and the Lord admits him;

now

now he who is admitted is in by him who makes the Surrender. For in a Plaint in the nature of a Writ of Entry in the *Per*, he shall be supposed to be in the *Per* by him who made the Surrender, because the Lord is but an Instrument to make the Admittance, and he who is admitted shall not be subject to any Charges or Incumbrances of the Lord, for the Lord hath but a Customary power to make the Admittance *secundum effectum sursumrestitutionis*, as before is said.

A Copy-holder surrenders to the Use of *J S*; the Lord refuseth to admit him: he cannot enter, unless there be an especial Custome to warrant it; but if there be, then he may enter.

*M. 37 Eliz.
Cro. 1. part,
Berry and
Green's Case.*

SECT. VII.

Where the Admittance of the particular Tenant shall be the Admittance of him in the Remainder.

Proofs.

A Copy-holder in Fee by Licence made a Lease for years; the Lessee enters; the Copy-holder, having issue a Son and a Daughter by one Woman, and a Son by another,

*M. 24 Eliz.
Co. 4. part,
Brown's
Case.*

another, died ; the eldest Son died before Admittance. In this Case it was Resolved, (amongst other things) That the Admittance of Tenant for life is the Admittance of him in the Remainder, but not to bar the Lord of his Fine, which he ought to have by the Custome.

*P. 36 Eliz.
B.R. Coke
4. part,
Fitch and
Huckley's
Case.*

The Father a Copy-holder in Fee made a Surrender to the Use of himself for life, and after to the use of his Son for life, and after to the Use of his last Will. The Father was admitted, and died : The Lord pretending a Forfeiture entred, and granted the Copy-hold to a Stranger. Resolved, That the Admittance of the Tenant for life was the Admittance of him in the Remainder ; and then the Land could not vest in the Grantee of the Lord.

*Tr. 36 Eliz.
B.R. Deal
and Hig-
den's Case,
Moore 358.*

It was Resolved by the Justices, That the Admittance of Tenant for life of a Copy-hold is the Admittance of him in the Remainder, because he is to pay his Fine which is intire, and no Fine is due to be paid by him in the Remainder to the Lord : but otherwise it is of him in the Reversion.

*M. 39 Eliz.
B.R. Cro.
2. part, Gip-
pin and Bar-
nys's Case.*

A Copy-holder surrendred to the Use of one for life, the Remainder to another

in Fee : Tenant for life was admitted : He in the Remainder surrendered to the Use of *J S* ; which Surrender the Lord accepted of, and admitted him, and then the Tenant for life died. It was holden in this Case, That the Heir of *J S* should have the Land, for that the Admittance of the Tenant for life was the Admittance of him in the Remainder ; and also because the Acceptance of the Lord was *quasi* an Admittance to him in the Remainder.

A Copy-holder in Fee surrendered to the Use of his Wife for life, the Remainder to his younger Son in Fee, and died : The Wife was admitted, but the younger Son refused to be admitted during the life of his Mother, but afterwards, without other Admittance, he surrendered to the Use of *J S*. It was Resolved, That the Admittance of the Mother Tenant for life was the Admittance of the younger Son in the Remainder, because they made but one Estate.

A Copy-holder had Issue 3 Sons, *B, C,* and *D,* and surrendered to the Use of his last will, and thereby devised the same to his Wife for life, the Remainder to *C* and the Heirs of his body : The Wife died

*Tr. 2 Jac.
B. R. Auncelme and
Auncelme's
Case, Cro.
2. parts*

*Hil. 31 Eliz.
B. R. Bullein
and Graunt's
Case, Leon.
1 part, 1746*

ed after Admittance, and the Lord granted the Copy-hold to D in Fee, who surrendered to the Use of J S for life, and after died without Issue: B the eldest Son entered. It was adjudged, That his Entry was lawfull, and that Admittance of him was not necessary; for that if a Copy-holder surrendreth to the Use of one for life, he in the Reversion or Remainder may enter without any new Admittance.

SECT. VIII.

By what and whose Act, either of the Lord or of the Copy-holder himself, or of the Lord severally or all together, the Copy-hold-land or Estate shall be gone, determined, or extinguished; and where suspended only.

HAVING in the Sections before declared where a Surrender and Admittance thereupon, either by the Lord or his Steward in Court, or to them, or into the hands of Tenants out of Court, shall be good, and where not: Let us now look upon this Division, and see in what case the Copy-holder or Copy-holder's Estate

state or Interest shall be said to be gone, determined, or extinguished; and by what and whose Act it was or may be determined. First, It may be determined by the Act of the Lord himself. 2. By the Act of the Copy-holder. 3. By Acts of them both joyned together. And lastly, by the Act of the Law. All which will evidently appear by the Judgments, Resolutions and Precedents after ensuing.

Proofs.

The Lord by his Act cannot, without the concurrent Act of the Copy-holder himself, determine the Estate and Interest which the Copy-holder hath in his Copy-hold. And therefore the Severance of the Free-hold and Inheritance of the Land holden by Copy of Court-Roll (being done by the Act of the Lord) doth not determine the Copy-holder's Estate, or extinguish the Copy-hold. For although that the Estate of the Copy-holder be but an Estate at will, viz. *ad voluntatem Domini secundum Consuetudinem Manerii*; yet Custome hath so established the Estate of the Copy-holder, that he is not removeable at the will

Co. 2. part;
17. in Lane's
Case.

Co. 4. part;
21. in
Brown's
Case.

will of the Lord, so long as he performs the Customes and Services.

If a Copy-holder will joyn with the Lord in a Deed of Feoffment of the Manor, there, by that Act of them both, the Copy-hold is extinct; as it was said by the Lord *Anderson* Chief Justice, *P. 24 Eliz. in Co. B.*

Vid. Cro. 1. part, 5. acc.

A Feme-sole was Lady of a Manor, to which were divers Copy-holders: One of the Copy-holders did intermarry with the Seignioress of the Manor. It was the opinion of the Justices, That the Intermarriage was onely a Suspension of the Copy-hold, and not an Extinguishment of it. But afterwards they joyned in suffering a common Recovery of the Land; and upon that their Act it was Resolved, that the Copy-hold was extinguished.

H. 26 Eliz. in Co. B. Cro. 1. part, Stockbridg's Case.

Husband and Wife Copy-holders in Fee to them and their Heirs: The Husband for Money obtained an Estate of Free-hold to him and his Wife, and the Heirs of their bodies. It was Resolved in that Case, That by the Acceptance of the new Estate the Copy-hold was determined.

M. 29 Eliz. in C. B. Godb. 101.

If a Copy-holder doth surrender to him who hath a Lease for years of the Ma-

Manor to the Use of the same Lessee, by that Act of his the Copy-hold-estate is extinct.

The Lord of a Manor sold the Freehold of a Copy-hold unto another, and so it was divided from the Manor: and afterwards the Copy-holder did release to the Purchasor. It was the opinion of the Justices, That by this Release the Copy-hold was gone and extinct. But in that Case it was said, That if a Copy-holder be ousted, so as the Lord of the Manor is disseised, and the Copy-holder releaseth to the Disseisor, *Nil operatur* by such Release.

P. 30 Eliz.
B. R. Leon.
1. part, 102
Wakefield's
Case.

A Copy-holder had common by Usage in the Wastes of the Lord as to his Messuage and Lands belonging: The Copy-hold comes to the Lord, who after grants the same to the Copy-holder *cum pertinentiis*. In this Case it was holden, That these words, *viz. (cum pertinentiis)* could not create a new Common, and the Common first holden was by Custome annexed to the Customary Estate, and was absolutely extinguished.

If there be Lessee for life, the Remainder for life of a Copy-hold, and the first Tenant for life purchaseth the Free-hold

M. 9 Jac. in
C. B. ad-
judge. acc.

of the Copy-hold, and afterwards levieth a Fine thereof, and five years pass: It was adjudged, That in that Case by the Fine levied the Copy-hold was not gone nor destroyed, and that this Fine was not a Bar to him who was in Remainder in life of the Copy-hold.

*P. 8 fac. in
Co. B. Moore
and Ride-
vall's Case.*

There was Tenant for life of a Copy-hold: The Lord granted the Reversion of the Copy-hold after the determination of the particular Estate to another for 20 years: Afterwards the Copy-holder, who was Tenant for life, by Deed made a Lease for life of his Copy-hold, and made Livery, which was a Forfeiture of his Copy-hold-estate. It was the opinion of the Justices in that Case, That this Act of the Tenant for life was not a Determination or an Extinguishment of the Copy-hold: For although it was a Determination of the particular Estate of the Copy-holder, and that he in the Remainder might enter; yet the Land remained Copy-hold as it was before.

*3 fac. in B.
R. Lashmor
and Auerie's
Case, Cro. 2,
part.*

The Custome of a Manor is, That if a Copy-holder in Fee dieth seised, his Wife shall hold the Land during her life as Free-Bench: the Lord enfeofeth the Copy-holder of the Land. It was adjudg-

judged, That she should not hold the Land for her life as Free-Bench, but it was gone by the Purchase. Contrary, if the Lord had inclosed a Stranger of the Land.

C purchased a Copy-hold from *A* Lord of the Manor, to him and his Wife and their Child for their lives: Afterwards *A* by Indenture granted the Free-hold to *B* for life, rendering Rent, and made Livery: and afterwards *A* levied a Fine *sur Conusance de droit*, &c. to *C* of the same Lands, who afterwards accepted of the Rent from *B*. It was holden in that Case, That by the Acceptance of the Rent from *B* the Copy-hold of *C* was destroyed and determined,

Vid. 30 H. 8.
Dyer, acc.

More, If a Copy-holder takes a Lease for years of his Copy-hold-lands, the Copy-hold is determined: and so it is, if the Lord leaseth a Copy-hold for years which is escheated, the Copy-hold is determined. But if a Copy-holder purchaseth the Manor, the Copy-hold is not determined, but suspended, because there is no Interruption, but it is able to be granted again, because by the Custome it sufficeth that it hath been demised and demisable.

M. 15 & 16
Eliz. in Co.
B.

SECT. IX.

Of Forfeitures of Copy-hold, and Copy-hold-estate; and what Acts or things done by the Copy-holder shall amount unto or be adjudged a Forfeiture of the Copy-holder's Estate, what not.

THE general Grounds of Forfeitures of Copy-holds, or of their Estates, are declared in the former part of this Treatise, unto which I shall refer you. That which I shall now say is but by way of Amplification of those Grounds, with some Judgments and Authorities in several Cases upon sundry differences. All Forfeitures may be reduced unto these Heads: Either voluntary Acts done to the prejudice of the Lord, or negligent or wilfull refusal to doe and pay his Duties and Services to the Lord, which by the Laws and Customes of the Manor he ought to doe and perform.

Proofs.

Coke 4. part,
Murneys
Case.

A Copy-holder makes a Lease either for life or years of his Copy-hold-lands, which

which is not warranted by the Custome of the Manor : now although such Lease shall be a good Lease as betwixt the Copy-holder and his Lessee, and he shall not avoid his own Lease; yet as unto the Lord it is a Forfeiture of the Copy-hold and of his estate, and the Lord shall take advantage of such Forfeiture, and may enter upon the Lands leased.

So if a Copy-holder makes a Lease of his Copy-hold for 3 years by word, to begin at *Michaelmas* or at a day to come; although it is a good Lease as betwixt the parties to it, yet it is a Forfeiture of the Copy-hold to the Lord; and so it was holden *Hil. 37 Eliz. in East and Harding's Case.*

*H. 37 Eliz.
East and
Harding's
Case.*

A Copy-holder of a Manor made a Lease of his Free-hold-lands for 10 years, and, to avoid a Forfeiture, made a Lease of his Copy-hold-lands for one year; but covenanted with his Lessee, that he should enjoy the Copy-hold-lands *de anno in annum*, during the 10 years. It was the opinion of the Justices in this Case, That because this demise of the Copy-holder was but for one year, and so warranted both by Law and Custome, and it was but onely a Covenant on the part of the Lessee, that he

*P. 10 Jac. in
Co. B. the
Lady Moun-
tague's Case,
Cro. 2. parts
acc.*

he should hold it for a longer time, than this was no Forfeiture, although the Lord pretended the same to be a Forfeiture.

*M. 27 Eliz.
in Co. B. by
Anderson.
Moore 184.*

The Lord licensed his Copy-holder to make a Lease of his Copy-hold-lands for 21 years, to begin at *Michaelmas* following: The Copy-holder by Indenture made a Lease accordingly; but afterwards, before *Michaelmas*, he made another Lease by Indenture to another person to begin at *Michaelmas* following. It was the opinion of the Lord *Anderson* Chief Justice, *Mich. 27 Eliz. in Co. B.* That the making of this second Lease, being without the Licence of the Lord, was a Forfeiture of his Copy-hold.

*M. 29 Jac. in
B. R. Wor-
ledge and
Bamburgh's
Case, Cro. 2.
part.*

A Copy-holder for life hath Licence of the Lord to make a Lease for 3 years, if he so long live, and he makes a Lease for 3 years without such Limitation. It was holden to be no Forfeiture of his Estate in the Copy-hold, because the Law makes such a Limitation to the Estate which he makes, that it shall continue but during his life. But if he had been a Copy-holder in Fee, it had been a Forfeiture of his Estate to have made such an absolute Lease, because he had done more then

then he was licensed to do by the Law. And so it was adjudged in *Hall and Arrowsmith's Case*, which see in *Popham's Reports*, 185.

If a Copy-holder without Licence of the Lord doth erect a new House upon his Copy-hold-lands, some opinion hath been, That the same is a Forfeiture of his Estate. But I doubt much of that Case, because the Act done is for the benefit and advantage of the Lord, and not to his Prejudice. *Quære* of it.

*M. 8 Jac. in
B R. Wara's
Case.*

SECT. X.

Where denial or refusall to pay his Rent, Fine, or to doe his other Customes and Services, shall be a Forfeiture of his Copy-hold and Copy-hold-estate, and where not.

Proofs.

A Copy-holder in Fee was seised of Land rendring Rent at *Michaelmas* and our *Lady-day*. The Lord at the last instant of the day of payment demanded the Rent upon the Land, and the Copy-holder was not there, nor any for him, to pay it. It was a Question, if his Non-payment of the Rent was a Forfeiture of his

*H. 33 Eliz.
Crispe and
Fryer's Case
in Moore.*

his Copy-hold or not. And the better opinion of the Court seemed to be, That it was a Forfeiture, because the Copy-holder was to take peremptory notice of the day of payment of his Rent, and his not being there seemed to imply that it was a voluntary Denial, or Refusal at the least, of doing the same. But *Quare* of it; for it was resolved in another Case, *Tr. 21 Jac. in C. B.* That not payment of Rent, or of the Fine upon admittance to his Copy-hold, was no Forfeiture of his Copy-hold-estate, without there was some express verbal Denial of it, which there was not in this Case.

*Tr. 21 Jac.
in Co. B.*

*M. 37 Eliz.
B. R. Taver-
nor and
Lord Crom-
well's Case,
Cro. I. patt.*

A Copy-holder seised by force of several Copies of *Black-acre* by the Rent of 4 *d*, *White-acre* by the Rent of 4 *d*, and *Green-acre* by the Rent of 6 *d*, denied the Rent of *Black-acre*. In that Case it was holden to be a Forfeiture of that Acre, but no Forfeiture of the other two Acres, because although they were all in one hand, yet because they were holden by several Rents, the Forfeiture of the one Acre cannot be the Forfeiture of the other two Acres.

No Fine is either due or payable to the

the Lord, but either upon a Discent, or upon an Admittance. But if such a Copy-holder upon his Admittance shall make an absolute Refusal to pay the Fine to the Lord, the same is a Forfeiture of his Copy-hold and of his Estate. But there such a Fine must be reasonable. For if the Fine assessed by the Lord be an unreasonable Fine, (of which the Judges shall determine) a Refusal or Denial of the Copy-holder to pay the same shall be no Forfeiture of his Estate or Copy-hold.

*Vid. Coke
4. part, 28.
in Sands
Case.*

Note, It was Resolved by the Justices, That if the Lord demandeth an unreasonable Fine of his Copy-holder, and he refuseth to pay it, it is no Forfeiture; otherwise where it is a reasonable Fine. If a Fine be certain, the Tenant is to bring it with him to the Court, and to pay it before Admittance; and if he be not ready to pay it, it is a Forfeiture, and so it was adjudged. But what shall be a reasonable Fine or an unreasonable Fine, ought to be determined *per arbitrium boni viri*; and the Court and Justices of it shall be Judges of the Reasonableness of the same; if it be pleaded that the Fine demanded by the Lord, or the

Dis-

*M. 43 Eliz.
Dalton and
Hamond's
Case, Moore
622.*

Distress for it, be unreasonable or excessive.

M. 6 Jac. in
C. B. Wil-
lowes and
Willowes
Case. Coke
Select Cases.

A Copy-holder seized of Copy-hold lands of the yearly value of 53 s. 4 d. per annum, and no more, surrendered them into the hands of the Lord of the Manor to the Use of J. S. and his Heirs: The Custome of the Manor was, That upon the Admission of any person a reasonable Fine shall be assessed by the Lord or his Steward to be paid. The Steward at the Court holden for the said Manor assessed a Fine of 5 l. 6 s. 8 d. (the value of the Lands for 2 years) to be paid by J. S. for a Fine; which Fine being requested of him by the Lord to pay, he refused to pay the same; whereupon the Lord entered upon the Lands for a Forfeiture. In which Case these Points were Resolved.

1. That if the Fine assessed had been reasonable, yet a certain time was to be set, and a certain place where it should be paid: for it shall not be intended that the Tenant hath sufficient Money about him to pay a Fine which is uncertain to be assessed.
2. That the Fine assessed by the Steward was an unreasonable Fine;
- and 3. That the Refusal was no Forfeiture.

If the Fine of a Copy-holder be assessed by the Lord or his Steward, be the Fine reasonable or unreasonable, the Lord must demand the Fine of the Copy-holder before he can enter upon the Copyhold for not payment thereof, and the Reasonableness or Unreasonableness thereof shall be adjudged by the Court.

Lands being Customary Lands, and by the Custome discendable to the younger Son, the Father died, the younger Son being of the age of 2 years: Thirty years incurred after the death of the Father, and no Court had been holden for the Lord of the Manor: But in the interim the younger Son had made a Lease of the Lands to a Stranger; and after, at the next Court holden for the Manor, he came into Court and prayed to be admitted, but the Steward refused to admit him. It was holden in this Case, That the Lease made by him was good, and that there was no negligence in him to be admitted to the Copyhold-estate; for that it was holden in this Case, That if a Copy-holder dieth, his Heir within age, he is not bound to come at any Court during his Nbnage to pray Admittance, or to tender his Fine for the same; and
if

H. 13 Jac.
C. B. Denny
and Lemon.²
Case, Hob.
135. Co. 11.
part, God-
fric's Case
acc.

P. 30 Eliz.
B. R. Anno-
ry and Eves
Case, Leon.
1 part, 100.

if the death of the Ancestor be not presented, nor Proclamations made that the Heir come in to take up the Land and pay his Fine, the Heir shall not forfeit his Land for such neglect, although he be of full age.

4 Eliz. Dyer
511.

If the Homagers in a Court-Baron being Copy-holders do refuse to make their Presentments, it is a Forfeiture of their Copy-holds: and so it was Resolved to be by both the Chief Justices in the *Star-Chamber* in the Earl of *Arundell's* Case.

H. 13 Jac.
B. R. Bel-
field and A-
dams Case,
Bulstr. 3.
part, 81.

A Copy-holder came not to the Lord's Court of the Manor to doe his Suit and Service by the space of 3 years together. The Question was, if it was a sufficient cause of Forfeiture of his Copyhold. It was said by the Court, That it was no cause of Forfeiture, if a Warning be not given by the Lord of the time of his Court to be holden, and notice thereof given to the Copy-holder himself; and the withdrawing of his Suit by a Copy-holder is onely fineable: but if he doth deny to doe his Suit and Service, then it is a Forfeiture of his Copyhold: and so was it adjudged *M. 14 Jac.* in *B. R.* in *Hammond* and *Winibank's* Case.

Sum-

Summons was given at the Church-door for a Copy-holder to appear at the Lord's Court, and do his Suit and Service; upon which Summons he did not appear. The Doubt was, if it was a cause of Forfeiture of his Copy-hold. It was the opinion of the whole Court, That it was no cause of Forfeiture of his Copy-hold, because that it was not shewed that it was the Custome to make such Summons: and the Court said, That it were hard to make it a Forfeiture, because perhaps the Copy-holder had not Notice of it: and they held that in such case Notice must be given to the person, and his Refusal must be a wilful Refusal.

H. 36 Eliz. in C. B. Godb. 142.

Vid. M. 30 Eliz. C. B. Sir John Bruanche's Case, Leon. 1 part, 104. Where general Warning of a Copy-holder to appear at the Lord's Court given within the Parish shall be sufficient, where not.

The Custome of a Manor was, That if a Copy-holder died seized, his Wife should hold his Lands as her Free-Bench, and be admitted Tenant, and that the Son should not be admitted Tenant during the life of his Mother: and farther the Custome was, That if any Copy-holder committed Felony, and it were presented by the Homage, that the Lord might seize the Copy-hold as forfeit: The Copy-holder died; his Wife was admitted to her Free-Bench: The Son committed Felony; the Wife died. The Question

H. 25 Eliz. in B. R. Bornesford and Sir John Fackington's Case, Leon. 1. part, 1.

D

was,

was, if the Lord might seize the Copyhold as forfeit. It was objected, He could not, for that the Son was not Tenant at the time of the Forfeiture committed, and so the Lord could not then seize, and the Custome should be taken strictly. But notwithstanding it was Resolved, That the Lord should have the Land as forfeit, and that the Son was a Copy-holder within the Intent of the Custome.

If Husband and Wife be Joynt-Copyholders of the purchase of the Husband, during the Coverture the Husband is attainted of Felony, and dieth: It is no Forfeiture of any part of the Copyhold. But if the Purchase be made before the Coverture, then it is a Forfeiture of the moyety.

*M. 3 Jac. in
Staccario
Godb. 269.*

The King being Lord of a Manor, a Copy-holder within the Manor made a Lease of his Copyhold for 3 Lives; and the surviving Tenant for life continued the possession of the Lands for 40 years. Though the making of such a Lease for 3 Lives was in Law a Forfeiture of the Copyhold; yet because it did not appear upon the Endorsement of the Deed that Livery was made, it was holden, That the

the King could not take advantage of the Forfeiture.

If a Copy-holder doth bargain and sell his Copy-hold-lands by Deed indented and enrolled, it was Resolved, The same was no cause of Forfeiture of the Copy-hold of which the Lord can take advantage, because the Copy-hold did not pass by the Deed: and so it was said it was adjudged in *London's Case*.

So, if a Copy-holder for life surrendreth to the Use of another in Fee, and besides that makes Livery of the Land; this is no Forfeiture of his Copy-hold, because the Estate passeth by the Surrender, and not by the Livery.

35 Eliz. Bullock's Case.

If a Copy-holder for life cuts down Timber-trees, it is a Forfeiture of his Copy-hold: and so it was adjudged in *Belfield* and *Adams Case*. But if a Copy-holder makes a Lease for years, and the Lessee cuts down Timber-trees, or commits other Waste upon the Copy-hold-lands, the Lord cannot enter upon the Land for a Forfeiture; but in such case the Lord is put to his Action upon the Case against the Wrong-doer.

SECT. XI.

Where the Act of the Lord, and what Act of his, shall dispense with a Forfeiture made by his Copy-holder; where and what not.

Proofs.

Pasc. 5 Jac.
Cro. T. part,
Manlie and
Willington's
Case.

A Copy holder commits Waste, and after the Waste done, the Lord accepts of the Rent from the hands of the Copy-holder. *Quare* if it shall bar him to enter for the Forfeiture. It is a *Quare* not Resolved.

P. 5 Eliz.
Moore 49.

If Lands be demisable to two by Copy for life *successive*, and the Custome of the Manor is, that they may not cut Trees: if the first of them cutteth down Trees, it is a Forfeiture both of the Estate of the present Tenant for life, and of the Estate of the other in Remainder over.

If a Copy-holder levies a Fine, makes a Feoffment, or suffers a common Recovery which destroys the Estate: in such case no Acceptance of the Rent, or Act done by the Lord, shall be available to make the Estate again good. But where the Custome of the Manor onely is broken;

ken; as if the Copy-holder makes a Lease of his Copy-hold-lands for more years than one year, or denies to pay his Rent, or denies to be sworn of the Homage, or commits Waste : there his Estate may be afterwards confirmed, and there and in such case the Acceptance of the Rent by the Lord will amount to a Confirmation of the first Estate.

In some cases, where an Estate of a Copy-holder is forfeited by Law, yet by Custome, and the Act of the Lord in his Court of the Manor, the Forfeiture may be mitigated, and the Land shall not be utterly forfeited or destroyed. As where the Custome is, That for Waste Copy-hold shall be forfeited, a Custome for to amerce the Tenant for the Waste done, and to distrain for the Amercement, will be a good Custome to mitigate the Forfeiture of the Copy-hold.

The Custome of the Manor where Copy-hold-tenements were demisable for lives was, That if any such Copy-holder suffered his Messuage to be ruined for want of Repairing, or by committing of Waste, if the same was presented by the Homage, the Lord used to distrain the Cattel as well of the Copy-holder

*17 Car. in
B.R. Thorne,
and Tyter's
Case.*

holder himself as of his Under-tenant levant and couchant upon the Lands for the said Amercement. It was objected, That the Custome was not good, for that it was an unreasonable Custome, that the Under-tenant should be punished for the offence of the Copy-holder, for the Under-tenant is a Stranger to the Custome, and Customs should be taken strictly. But it was Resolved that the Custome was good: For by the Law, the suffering of the Copy-hold Mesluage to fall to ruine, or to be wasted, was a Forfeiture of the Copy-hold, and the Custome did abridge and mitigate the Forfeiture, and the Under-tenant for a year was a Tenant to the Lord, and distrainable for the Rents and Services, and the Charge lies upon the Land, and not upon the person, and therefore it was Adjudged, That the Custome was good, and the Amercement lawful, and the Distress of the Cattel of the Under-tenant levant upon the Land was lawful, all of them being by the Act of the Lord in his Court, and by the Custome of the Manor, in mitigation of the Forfeiture of the Land, and so for the good of the Copy-holder.

ments to them and their Heirs in Fee-simple or in Fee-tail: and in that Chapter he particularly sets forth the manner of Grants of such Estates, viz. *Ad hanc Curiam venit A de B, & sursum reddidit in manus Domini, &c. annuum Messuagium, &c. ad usum C de D, & Hæredum suorum, vel Hæredum de corpore suo exeunt. Habendum sibi & Hæredibus de corpore suo exeunt. &c.* By which it appeareth to be the opinion of Mr. Littleton, that an Estate may and might be of Copy-hold-lands. And herewith agreeth the opinion of Mr. Plowden in his Commentaries in *Morgan and Manxell's Case*. But note, that the opinion of Mr. Littleton is, That there must be a Custome of the Manor to enable such Estates of Copy-hold-lands.

It is said in *Coke* 3. part, in *Heydon's Case*, That where an Act of Parliament doth alter the Service, Tenure or Interest of the Estate, either in prejudice of the Lord or of the Custome of the Manor, or in prejudice of the Tenants, there such an Act of Parliament doth not extend to Copy holds. And therefore the Statute of *Westm. 2. de Donis*, because it extendeth to the Alteration of the Service

vice

vice and Tenure of the Land, and is prejudicial to the Lord of the Manor, doth not extend to Copy-holds. But in that Case it is agreed, That by a special Custom Lands might be entailed; for that it might be, that upon the creation of the Manors Lands were given by Lords of Manors to hold by their Tenants by particular Services and for particular Uses; viz. to some to them and their Heirs in Fee-simple, to some others to hold to them and the Heirs of their bodies begotten, and to some others for particular Estates, as for life, &c. and such Estates having continued in their Issues time out of mind, Custom hath now enabled such Estates to be of Copy-holds in tail: and although they have and enjoy such their Estates, be it either Fee-simple or Fee-tail, yet it is but *secundùm Consuetudinem Manerii*: and therefore and for these Reasons and causes, although that Copy-hold be not or could not be entailed within the general words of the Statute *de Donis*, &c. yet by Custom time out of mind used, they say that Copy-holds may be entailed.

36 Eliz. in the King's Bench it was Adjudged, That where the Custom of the

the Manor was, that Lands might be granted unto any in Fee-simple, in such case a Grant of Lands unto a man and the Heirs of his body was within the Custome: For a Custome which extendeth to the greater will extend to the lesser Estate.

*M. 15 Jac.
Lee and
Brown's
Case, Popb.
128.*

Tenant in tail of a Copy-hold surrendered the same into the hands of the Lord, to the Use of *J S, &c.* In that Case 2 Questions did arise. 1. If Copy-holds were within the Statute *de Donis, &c.* 2. Whether the Tail might be cut off by a Surrender. The Court doubted of the first Point; but the better opinion seemed to be, That the Statute co-operating with the Custome, they might be entailed.

*H. 31 Eliz:
B.R. Bullen
and Graunt's
Case, Leon.
1 part, 174.*

A Copy-holder had Issue 3 Sons, *A*, *B*, and *C*, and surrendered his Copy-holds to the Use of his last Will, and thereby declared the same to be to the Use of his Wife for life, the Remainder to *B* his second Son in tail, and afterwards to *A* in Fee. It was a Question in this Case, if *B* had a Fee-simple conditional in the Lands, or an Estate-tail. For if a conditional Fee, then a Remainder over of it could not be limited. It was the opinion of *Wray* Chief Justice, That it was an Estate-tail in *B*, and not a Fee
con-

conditional, and that Customary Lands might be granted in tail.

A Surrender of Copy-hold-lands was made within the Manor of *Stevenson*, to the Use of *J S* and the Heirs of his body; and after Issue, he surrendered the Lands unto another. It was agreed by all the Justices, That it was a Fee-simple conditional at the Common Law, and after Issue, that he might alien the Lands.

*H. 34 Eliz.
B.R. rot-292.
Stanton and
Barney's
Case.*

A Copy-holder in Fee of the Manor of *Fairchilds* and *Preachers*, 3 *H. 8.* surrendered his Copy-hold-lands to the Use of his eldest Daughter for life, the Remainder to the eldest Son of the said Daughter and the Heirs-males of his body, the Remainder to the right Heirs of the Copy-holder in Fee. In this Case it was said, That an Estate in Tail could not be of Copy-hold-lands. It was the opinion of *Fenner* and *Popham*, That by Equity of the Statute *de Donis* an Estate-tail might be of Copy-hold-lands, though not otherwise.

*M. 36 Eliz.
B.R. Grave-
nor and
Brook's Case,
Poph. 34.*

Now on the other side, That Copy-hold-lands cannot be entailed, nor are within the Statute *de Donis, &c.* see these Cases and Resolutions following.

H 35 Eliz. in Co. B. it was Resolved
by

H. 35 Eliz.
in Co. B.
Pitts and
Huckley's
Case.

by all the Justices, that Copy-holds were not within the Statute of *Westm. 2. de Donis* : For if they were within that Statute, then the Lord should not enter nor take advantage of the Forfeiture of the Copyhold for Felony, (the contrary of which was Resolved in *Borneford*, and Sir *John Packington's Case*) but the Donor, and the Services should be done to the Donor, and not to the Lord of the Manor ; which is against the nature of a Copyhold-Tenure.

Tr. 18 Jac.
in Co. B.
Royden and
Moultier's
Case, Cro. 3.
part, 32, 33.
Godb. 367.
acc.

The Case was, That a Copy-holder surrendered to the Use of one in Tail, there being no Custome to warrant such Surrender. In this Case the Question was, whether a Copyhold might be entailed within the Statute *de Donis*. It was holden by all the Justices, That it could not be entailed within the Statute, and that for divers causes. 1. Because it is not within the Letter of the Statute, which speaks only *de Tenementis per Chartam datis*: and Copy-holds cannot pass by Deed, but by Surrender onely, as is agreed on all sides. 2. Because they are not within the meaning of the Statute, because that before 7 E. 4. 19. they were not of any account in Law, being onely Estates at will of the Lord

Lord *secundum Consuetudinem Manerii*.

3. Because the said Statute *de Donis* provides onely against those who might make Disinheritson by Fine or Recovery, which a Copy-holder there could not do or make, because that then upon such Grants in Tail the Reversion should be left in themselves, which could not be, being to the prejudice of the Lord of the Manor. And also 4. because it would be very mischievous, because then there should be no means to dock or cut off such entails, (common Recoveries and Fines not being then in use) unless there were a special Custome to that purpose.

Having thus declared and made mention of the several Cases and Resolutions in this much-controverted Point, Whether Copy-hold may be entailed within the said Statute *de Donis, &c.* I shall not deliver any absolute opinion upon the same, although I do much incline to the Affirmative part, being chiefly led thereunto by the opinion of Mr. *Listleton*, and by the Resolution in *Manxell's Case*, and of my Lord *Coke* in *Heydon's Case*, and a late Resolution in the said Point, 42 *Eliz.* in *Eriſh* and *Rives Case*, where it was adjudged in the Court of *Common Pleas*,
upon

upon an Evidence given in a Case of Copy-hold-lands within the Manor of *Istleworth-Sion* in the County of *Middlesex*; where it was Resolved, That no Estate-tail could be of a Copy-hold without a particular Custome to warrant the same: but if there was such a particular Custome within the Manor to warrant such Estates, then by the Custome co-operating with the Statute (as before is expressed) Copy-hold-lands might be well entailed within the said Statute.

Admitting then that by an especial Custome of the Manor Lands may be entailed; the next matter to be considered of is, By what and whose Acts the said Estate shall be either discontinued or barred, and what shall amount to a Discontinuance or a Bar to the Issue in Tail of such Estate.

13 R. 2. lts.
Judgment 7.

In 13 R. 2. lts. Judgment 7. it is said, That the Heir who is inheritable to the Copy-lands by Custome may recover the same by Plaint in the Court of the Lord in the nature of an Assize of *Mort-dauncestor*, but he shall not have an Assize of *Novel Disseisin*: And 15 H. 8. Tenant by Copy 24. The Heir of a Copy-holder Tenant in Tail shall recover

15 H. 8. Tenant by Copy 24.

cover the Lands in a Formedon in the Discender.

The Custome of a Manor was, That Plaints in the Court of the Lord of the Manor have used to be in real Actions. A Recovery was by Plaint in the nature of a real Action against a Copy-holder being Tenant in Tail, and a Recovery thereupon had. It was holden in that Case, That the said Recovery shall be a Discontinuance to take away the Entry of the Heir in Tail, because such Plaints are warranted by the Custome, and it is an Incident which the Law annexeth to the Custome, That a Recovery shall be a Discontinuance. But *Vide Tr. 36 Eliz. in B. R. in Dean and Rigden's Case.* If it had been a Surrender in Court, it had been no Discontinuance.

26 Eliz.
B.R. Deal
and Rigden's
Case, Moore
358.

In 27 Eliz. in a Case concerning the Manor of Northhall in the County of Essex, That if Copy-hold-lands might be entailed within the Statute of *Westm. 2.* then a Custome of a Surrender of it should be a Bar or a Discontinuance of such Estate; for as the Estate might be created by Custome, so it might be discontinued by a Surrender by Custome. And *Tr.*

M. 9 Car.
in Co. B.
Hill and Up-
church's
Case, Brown-
loe 121.

38 *Eliz.* *Field* and *Eliot's* Case, A Surrender by Tenant in Tail of a Copy-holder in Fee makes a Discontinuance of it. But yet notwithstanding those Authorities and Cases, I do conceive that a Surrender is no Discontinuance of a Copyhold-estate in Tail.

H. 30 *Eliz.*
B.R. *Right*
and *Foot-*
man's Case,
Leon. 1.
part, 95.

If a man be seised of a Copyhold in the right of his Wife, or be Tenant in Tail of a Copyhold, and he doth surrender to the use of another in Fee: It was holden in that Case, That the same doth not make any Discontinuance of the Estate of the Wife or of the Estate-tail, but that the Wife or the Issue in Tail may respectively enter into and upon the Land. And according to this it was adjudged in *Gravenor* and *Brook's* Case before-mentioned in 36 *Eliz.*

35 *Eliz.* in
C. B. *Lane*
and *Hill's*
Case.

Copyhold-lands were entailed, and the Copyholder surrendred the said Lands to the Use of another man in Tail with divers Remainders over, and then he died. It was said in this Case, That it was no Discontinuance of the Tail, but the issue in Tail, notwithstanding the Surrender, might enter. But it was said in that Case, That if it were a Discontinuance, that in such case a *Formedon* in the

the *Reverter* did not lie by the Tenant in Tail, because when a Copy-holder makes a Gift in Tail, he hath no Reversion, but a Possibility ; and the Lord shall avow upon the Donee for the Rents and Services, and not upon the Donor.

In Trespass it was adjudged , That a Surrender by Tenant in Tail of a Copyhold was not any Discontinuance of it, no more than a Surrender by Tenant for life to another in Fee was a Forfeiture. *H. 1 Jac. Oldcarr's Case, Moore 753.*

If an Enfant Tenant in Tail surrendreth his Copyhold-lands to the Use of a Stranger, who is admitted , the Enfant may enter at his full age, because it was not a Bar nor a Discontinuance. *H. 35 Eliz. Goales and Gran's Case adjudge, acc.*

It is not to be disputed or questioned whether a Common Recovery of Lands at the Common Law with Voucher over and Warranty be a Bar of Lands entailed : It is universally received by all Learned in the Laws of the Realm to be a Bar of such an Estate, and the Inheritances of a great many persons of Quality and others do depend upon such Common Recoveries had and suffered. But then the Question hath been, whether a Common Recovery had and suffered in the Court

E of

of the Lord of the Manor shall be a Bar of an Estate of Copy-hold-lands entailed : and for that , it will stand upon this difference, Where the Custome of the Manor hath always been , that such a Recovery there had shall be a Bar, where not. For without a special Custome, I do conceive that by a Recovery had and suffered in the Court of the Lord of the Manor, an Estate-tail of Copy-hold-lands cannot be barred : But where such a Custome is or hath been out of mind used, there I conceive that a common Recovery had and suffered in the Court of the Manor will bar an Estate in Tail of Copy-hold-lands. I shall onely put you two Judgments and Resolutions to make good this difference, although many others may be alledged.

*P. 37 Eliz.
in B.R. Clum
and Pease's
Case, Cro. I.
part.*

Upon a special Verdict in an Action of Trespass it was found, That the Lands were Copy-hold demisable in Tail, with the Remainder over in Tail : That Tenant in Tail in possession suffered a Common Recovery with Voucher in the Court of the Manor of these Lands, and afterwards died : But there was not any Custome found for suffering Recovery of such Lands in the Court of the said Manor.

nor. It was holden by the whole Court in that Case, That the Recovery should not bind the tail but upon a Recompence in value, and in that Case the Issue could not have Land in value: Also the Lord should lose his Fine, and the party to whose Use the Recovery was had should hold the Lands without Admittance or Grant from the Lord, which is contrary to the nature of a Copy-hold.

The other Case was this. Land was demisable in Tail by Custome: A Copyholder demised the Land in Tail by Copy: The Copy-holder suffered a Common Recovery in the Court of the Manor with Voucher and Warranty. The Court at the first doubted of it, because a Warranty could not be annexed to such an Estate in Tail. But yet afterwards it was Resolved, That the Recovery there was a Bar of the Tail. And Note, for a Conclusion of this point, That at this day, by the Customes of several Manors, Common Recoveries are had and suffered in the Courts of Lords of Manors for the docking and barring of Estate-tails of Copy-holds. And much inconvenience would ensue, both if Copy-holds at this day might not by Cu-

*M. 37 Eliz.
in B. R.
Eylett and
Lane's Case;
Cro. 1.
Part.*

some be entailed, and likewise if by Custom Common Recoveries had of Estate-tails with Voucher over in the Courts of Lords of Manors should not thereby be docked and barred.

SECT. XIII.

What things are incident to a Copy-holder, and what he may take of common right without the Grant or Licence of the Lord : And what Acts upon the Land shall bind the Copy-holder, what not.

IF a Copy-holder according to the Custom doth surrender into the hands of 2 Tenants to the Use of *J S* and his Heirs, and afterwards the Copy-holder dieth before the presentment be made of the Surrender by the Tenants, and the Lord before the Presentment accepts of the Rent of *J S* generally, but not as a Copy-holder : the Heir of the Surrenderee may enter into and upon the Lands, and receive the Profits thereof to his own use, for that nothing velleth in the Surrenderee before Admittance, and the Inheritance of the Copy-hold is in the Heir *quasi* by Descent.

To

To have Common in the Wastes of the Lord is not a thing incident to his Copy-hold, but is by Prescription or Custome of the Manor. If therefore a Copy-holder purchaseth the Inheritance of the Land, the Interest of the Common being a thing intire is gone and determined. But if the Copy-holder doth surrender part of his Copy-hold-lands to the Use of another, who is admitted, yet his whole Common is not thereby determined, but he shall have Common still for the Lands not surrendered.

*Pasch. 43 E-
liz. adjudge,
acc.*

A Copy-holder may take House-bote, Hedg-bote and Plough-bote upon his Copy-hold-lands of common right, as a thing incident to the Grant, if it be not restrained by a Custome, that the Copy-holder shall not take it but by Assignment of the Lord or his Bailiff. And if the Lord, where the Tenant hath such Botes, cuts down all the Woods and Under-woods which are standing and growing upon the Lands, to prevent the Copy-holder of his Botes, he may have an Action of Trespass against the Lord, as it was Resolved in *Heydon* and *Smith's Case*, *Pasch. 8 Jac. in Co. B.*

*9 H. 4. t.
Waste 59.
Coke Select
Cases 68.*

*M. 8 Jac.
B. R. The
King and
Stafferton's
Case, Yelv.
190, 191.*

A Manor may be Copy-hold, and holden of another Manor by Copy of Court-Roll: and if such a Copy-hold-Manor be granted unto *J. S* and his Heirs, *J. S* may hold a Copy-Court within his said Manor without a special Grant of it; for that of common right a Court-Baron or a Copy-hold-Court is incident to every Manor.

*P. 26 Eliz.
C. B. Cham
and Dover's
Case, Leon.
1. part, 16.*

A Lord of a Manor grants a Copy-hold for 3 Lives, and afterwards takes a Wife: The 3 Lives end or determine: The Lord enters into the Manor, and keeps the Copy-hold-lands in his hands for a time, and then grants the Lands over again by Copy, and dieth: The Wife of the Lord enters, and claims Dower in it. In this Case it was Resolved, That the Copy-holder should hold the Lands discharged of the Dower, because the Copy-holder comes and is in the Lands by the Custome, which is paramount to the title of Dower.

*P. 3 Eliz.
by Dyer.
Vid. Moore
50.*

A Copy-holder is seised of Lands at Common Law, and also of Lands holden by Copy of Court-Roll, and he by Indenture without Licence of the Lord, makes one Lease of both Lands, rendring Rent. It was said by *Dyer*, That in such case the whole
Rent

Rent is issuing out of the Lands at Common Law, because the Lease as to the Copy-hold-lands was utterly void.

If the Lord grants to his Copy-holder the Trees growing upon the Lands, and which shall after grow, with liberty to cut them down and carry them away; he may justify the cutting of the Trees which are growing, and it shall not be a Forfeiture of his Copy-hold, because the Lord hath by his Grant dispensed with it: But he cannot cut down the Trees which shall there after grow, as it was said by *Plowden* and *Popham*.

*P. 12 Eliz.
in B. R.
Moore 94.*

If a Copy-holder binds himself in a Statute, his Copy-hold-land shall not be extended upon the said Statute, because the Copy-holder in the eye of the Law hath an Estate but *ad voluntatem Domini secundum Consuetudinem Manerii*: But if a man be Tenant for life or years of a Manor, and a Copy-hold comes to his hands by Forfeiture or other determination, and he binds himself in a Statute; although the Copy-hold be after granted, yet it may be extended upon the Statute, because the Copy-hold was annexed to the Free-hold, and joyned with it in the hands of the Lord, when

*Pasc. 12 Eliz.
in B. R. ad
judge. acc.*

the Statute was acknowledged and entred into.

M. 3 Jac.
Swain and
Beckett's
Case, Moore
812.

The Custome of a Manor was, That a Copy-holder might cut and lop Trees for Hedg-bote and other necessities: The Queen made a Lease of the Manor to J S, with Exception of Trees: King James granted the Reversion to J D in Fee: The Assignees of the Term granted a Copy-hold to other for 3 Lives, *Habendum* to them *successive*: The Copy-holder cut Trees. It was Resolved, That the Copy-holder was in by the Custome paramount the Exception, although he took his Estate after the Exception, and therefore might Justifie the cutting of the Trees for the Hedg-bote and other necessities.

35 Eliz. Co.
4. part,
Bullock and
Dibley's
Case.

The Husband seised in Fee of Copyhold-lands in the right of his Wife surrendered the same to another, who was admitted, and afterwards the Husband died. It was Adjudged that in this case the Wife might enter, and she should not be put to her *Cui in vita*.

M. 9 Jac.
in Co. B. ad-
judge, acc.

If there be Lessee for life, the Remainder for life, of a Copy-hold, and the first Tenant for life doth purchase the Freehold of the Copy-hold, and levies a Fine thereof,

thereof, and 5 years pass: it was Adjudged, That this Fine should bar him in the Remainder of his Copy-hold.

SECT. XIV.

Where the Lord of the Manor shall be Chancellour in his own Court, to determine the Differences which arise betwixt Copy-holders.

A Copy-holder doth surrender his Copy-hold-lands to *A*, to hold the Lands till he hath levied the summe of 100*l.* upon trust that afterwards he shall surrender to the Use of *B*: *A* levies the money, and being required to make the surrender to *B*, he refuseth to doe it; whereupon *B* exhibits his Bill to the Lord in the Court of the Manor: The Lord there makes a Decree; that *A* make the Surrender to *B*, which he again refuseth to do; and thereupon the Lord seizeth the Lands, and afterwards admits *B* to the same. It was the opinion of the whole Court in this Case, That both the Seizure of the Lord and his Admittance of *B* were lawfull, because the Lord in such Cases of Equiry to execute Trusts

is

*H. 23 Eliz.
in B. R. Le.
on. 1. part, 2.*

in Chancellour in his own Court.

*Vid. 14 H.4.
34.*

If a false Judgment be given in a Court-Baron by the Steward against a Copy-holder, the Copy-holder in such case shall not have either a Writ of Errour or a Writ of False Judgment; but he may sue in the Court of the Lord by Bill, to be Relieved against such Judgment; and the Lord, as Chancellour, may give him Relief therein, and shall restore the Land to the party upon the false Judgment given by the Steward, and Restitution made to the Copy-holder.

S E C T. XV.

Of Surrenders upon Conditions; and where such Surrenders shall be good, where not.

Proofs.

*P. 31 Eliz.
Co. 4. part,
Kite and
Queinton's
Case.*

A Copy-holder in Fee surrendered out of Court his Copy-hold-lands to the Use of another and his Heirs upon Condition: At the next Court the Surrender was presented, but in the Presentment the Condition was omitted: He to whose Use the Surrender was made being dead, the Lord admitted his Heir. It was

was Resolved in this Case, That the Presentment of the Surrender was void, because it was not made in such manner as the Surrender was made. But if the Conditional Surrender had been presented, it had been good, although it was not entered into the Court-Roll.

A Copy-holder surrendered his Copyhold upon Condition, and afterwards by Deed he released the Condition. Resolved it was good without a Surrender, for that a Condition or a Right cannot properly be said to be determined by a Surrender, but it may be by a Release.

*Tr. 2 Jac.
B. R. Cro. 2.
part, Hall &
Shardbrock's
Case.*

The Case was ; Grandfather, Father, and Son : The Grandfather died : The Father assigned Dower to the Grandmother, being his Mother, who surrendered it back to the Father paying 10 *l.* per annum : The Father died ; his Wife brought Dower against the Son and recovered, because the Father had the Fee and Freehold conjoined in the life of the Grandmother by the Surrender. It was Resolved in this Case, That when the Wife of the Father doth recover Dower, she shall pay to the Grandmother so much Rent as doth belong to her proportion in Dower. And in this Case it was holden,

*M. 13 E. 3.
13.*

den, That although the Estate of a man be Conditional and defeasible upon a bad Title; yet the Wife shall not be ousted of her Dower untill the Conditional or defeasible Title be defeated. And where Husband and Wife are Tenants for life, and surrender to him in the Reversion, the Wife of him in the Reversion shall be endowed, and yet the Surrender is but Conditional; for if the Wife of the Tenant for life overliveth her Husband, the Surrender is defeasible: *à fortiori* in case where it is not defeasible, as in this Case. And it was said in case of a Surrender of Copy-hold-land, where it was Conditional, the Wife is dowable of it, if the Condition do not determine the Estate in the life-time of the Husband: But a Feme is not dowable of Copy-hold but by Custome of the Manor.

H. 27 Eliz.
Cro. 3. Part,
68. Bright
and Hub-
bard's
Case.

A Copy-holder devised his Lands to his Wife for life, and that she should sell the Lands for the payment of his Debts; and surrendered to the Use of his Will: The Copy-holder died: His Wife surrendered the Land upon Condition to pay 12 l. It was adjudged, It was a good Surrender upon the Condition, and that it was a good Sale made by her.

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The Father, Copy-holder in Fee, surrendered his Copy-hold-lands to the Use of his Son in Fee, upon Condition to perform Covenants in an Indenture: The Son after Admittance surrendered to *J S* upon Condition that if the Son pay 10 $\%$ the Surrender to be void: The Son neither pays the 10 $\%$ nor performs the Covenants in the Indenture: The Father enters. Resolved, That by the Entry of the Father both the Surrenders were avoided, and there the Son might well enter after the death of his Father, and the Surrender made by him to *J S*.

Tr. 33 Eliz.
Cro. 1. part,
Symonds and
Lawn's
Case.

If a Copy-holder doth surrender his Lands to the Use of *J S* and his Heirs absolutely, & the Lord admits the Tenant upon Condition, it is void; for that after Admittance the Tenant is in by him who made the Surrender, & not by the Lord.

33 Eliz. Co.
4. part, West-
wick's Case.

The Custome was, That a Copy-holder might out of Court surrender to the Use of a Stranger in Fee: The Lord of the Manor made *J* his Steward *ad exequendum per se*, or his sufficient Deputy, who made *A* his Deputy *pro hac vice* to take a Surrender of Husband and Wife, the Remainder in Fee: The Deputation was farther, *viz. Et ulterius faciendum quan-*

Tr. 28 Eliz.
in B. R. Cro.
1 part, Bar-
dett's Case.

quantum in me est : *A* took a Surrender of the Husband and Wife upon Condition, which Condition was afterwards performed and executed. Resolved in this Case, That although the authority to take the Surrender was absolute, and to be without a Condition; yet when *A* took it upon a Condition to be performed, it was a good Surrender made to him, by reason of the words in the Deputation, *Et ulterius faciendum, &c.*

P. 39 Eliz.
B.R. Oland
and Bar-
wick's Case,
Cro. 1. part,
acc.

A Woman Copy-holder *durante Viduitate* sowed the Land, and before Severance of the Corn she took Husband. Resolved, That although the Estate of the Wife was uncertain, and determined by the Limitation, and not by any Condition either in Fact or in Law, that the Lord should have the Corn sowed upon the Lands.

H. 2 Jac.
B.R. Cro. 2.
part, Cur-
ties and
Wolverston's
Case.

A Copy-holder in Fee of Lands descendable in *Borough-English* had 3 Sons, and surrendered to the Use of his Will, and thereby devised his Lands to his middle Son in Fee, upon Condition to pay to his 4 Daughters, to every of them 20 $\frac{1}{4}$ at their full age : The eldest Son had Issue 2 Daughters, and died : The middle Son is admitted, and doth not pay

pay the Daughters their Summs at their full ages : The youngest Son entred in the name of the Daughters, who disagreed to it. It was Resolved, That it was a Condition, but not broken without demand of their Summs at their full ages; and when they disagreed to the Entry, the Entry of the youngest Brother was not lawfull.

A Copy-holder surrendred his Lands into the hands of the Lord, *Habendum* after his death to the Use of an *Enfant en ventre sa Mier*. Resolved that a Surrender to an *Enfant en ventre sa Mier* was not good as an immediate Surrender, for that it cannot begin at a day to come. And whereas a Remainder was thereupon limited over, it was holden to be void, because it was to begin upon a Condition precedent, (*Vid.* the Condition) which was never performed; and therefore the Surrender into the hands of the Lord was void, because he takes it but as an Instrument to convey it over.

*M. 13 Jac.
B. R. Simp-
son and So-
thern's Case,
Cro. 2. part.*

SECT. XVI.

Where Custome which warrants the Lord or his Copy-holder to grant greater Estates, warrants the Grants of lesser Estates.

Proofs.

36 Eliz. Co.
4. part, Gra-
venor and
Tedd's Case.

THE Custome of a Manor is, That a Copy-hold-estate may be granted in Fee-simple. In that Case it was adjudged, That an Estate thereof granted to one and the Heirs of his body is good, and within the Custome; for *Ubi licet quod est majus, non debet quod est minus non licere.*

39 Eliz. in
B. R. Downs
and Hop-
kins Case.

The Custome of a Manor is, That Copy-hold-estates may be granted for life or lives: In such case a Grant is made to a Woman *durante Viduitate sua*: And it was adjudged good, and within the Custome, for that every Grant for life is *durante viduitate*; but every Grant *durante viduitate* is not for life.

H. 34 Eliz.
B. R. Stanton
and Bar-
ney's Case.

The Custome of a Manor out of mind used was, To grant certain Lands, parcell of the said Manor, in Fee-simple, and never any Grant was made to any and the Heirs

Heirs of his body for life or for years ; The Lord of the Manor did make a Grant by Copy to one for life, the Remainder over to another and the Heirs of his body. It was adjudged, That the Grant and the Remainder over was good ; for the Lord having an Authority by Custom, and an Interest withall, might grant any lesser Estate: but otherwise it is where one hath but a bare Authority.

In Trespass the Issue was, if the Lord of the Manor granted the Lands *per Copiam Rotulorum Curia Manerii secundum Consuetudinem Manerii predicti*. It was given in Evidence, that the Lord of late at his Court granted the Lands *per Copiam Curia*, where it was never granted by Copy before. In that case the Jury are bound to find *quod Dominus non concessit*, as it was holden by the Court. For although *de facto Dominus concessit per Copiam Rotulorum Curia*, yet *non concessit secundum Consuetudinem Manerii predicti*. But in that Case it was holden, If Customary Lands had been grantable in Fee, if the same Land escheat to the Lord, and he grant the same to another for life, it is a good Grant, and warranted by the Custom; for the Custom which enables

P. 29 Eliz.
C. B. Kempe
and Carter's
Case, Leon.
1. part, 56.

F

him

him to grant in Fee shall enable him to grant for life.

*M. 15 & 16
Eliz. in Co.
B. adjudge,
acc.*

If a Copy-hold-Estate fall into the hands of the Lord by Escheat, Forfeiture, or the like, and the Lord make a Lease thereof for years or life by Deed or without Deed, or if he make a Feoffment of it upon Condition, or if the Copyhold so escheated, &c. be extended upon a Statute or a Recognizance, or the same Land be assigned to the Wife of the Lord in Dower; In all these cases the Land can never be granted again by Copy, because after such Disposition thereof it was not demiseable. But if the Interruptions were not lawful, but tortious, as if the Lord be disseised, or if the Land be recovered against the Lord by a false Verdict, or by an erroneous Judgment; yet after the Land is re-continued, and the Interruption which was wrongful removed, the Land is grantable again by the Lord by Copy.

SECT. XVII.

Who shall be said such a Lord of a Manor as may grant Copy-hold-estates; and how long such Estates shall continue; and what persons shall be capable of Copy-hold-estates, what not; and what may be granted by Copy.

EVery one who hath a lawful Estate or Interest in the Manor, be it Fee, Fee-tail, Dower, Tenantry by the curtesie of England, Tenantry for life or years, Guardian, Tenant by Statute-Merchant or *Elegit*, are sufficient Lords and persons to grant Copy-hold-estates to others. And in some special case Estates in Copy-hold-lands may be granted by such a one who hath no Estate or Interest in the Manor.

Coke 2 part; Instit. 58.

Proofs.

A Guardian in Socage held a Copy-Court in his own name, and granted Copies in Reversion. Adjudged he was *Dominus pro tempore*, and had an Interest in the Lands; for he might make a Lease

Tr. 1 fac. B.R. Socage land and Ridler's Case, Owen 115.

thereof in his own name, and therefore he might both grant Copies, and also admit Copy-holders to Estates before granted. But the Bailiff of a Manor hath no Interest in the Manor, and therefore he cannot grant Copies of the Land holden of the Manor.

P. 41 Eliz.
B. R. Gay
and Kay's
Case, Cro. I.
part.

The Custome of a Manor was, That *Dominus pro tempore* might make a Demise for 2 or 3 Lives in Possession or Reversion: A Woman Tenant in Dower for life of the Manor granted a Copyhold to JS and 2 others for their Lives, *Habendum post mortem* of AB, and died: AB died. It was holden by the Court in this Case, That the Grant was good in Reversion, although it was not executed in the life of the Tenant in Dower: And *Vide*, That the Lord of a Manor for life, or any other particular Estate, having Interest in the Manor, might grant Copies in Reversion of Lands which are holden by Copy of Court-Roll, although the Grants were not executed in the life of the Grantors; as it was adjudged in Sir Peter Carew's Case. *Quare*: for Hil. 14 Eliz. in the Earl of Oxford's Case in Moore 95. it is not good, unless it come in Possession during the life of the Grantor.

H. 14 Eliz.
the Earl of
Oxford's
Case, Moore
95.

Note,

Note, It was holden by the Justices F. 15 Car. C. B. Godb. 6. acc.
P. 15 fac. in Co. B. That there ought to be a Custome to enable the Lord of the Manor to make a Grant of a Copy-hold in Reversion.

Generally, Things which lie not in Tenure, as Advowsons in grosse, Commons in grosse, or the like incorporate Inheritances, out of which a Rent cannot be reserved, cannot be granted by Copy of Court-Roll by the Lord of the Manor; nor can they be holden by any Service to be done for them. But Advowsons appendants, Commons appendants, and such things as are parcel of a Manor, and which have Continuance, may be granted by the Lord of the Manor, to be holden by Copies of Court-Roll, according to the Custome of the Manor.

In Trespass for cutting down of Under-woods, the Question was, Whether Under-woods might be granted by Copy of Court-Roll, for that by such Grant or Lease the Soil passeth not. But it was Resolved, That Under-woods are a thing of Inheritance and perpetuity, which may have Continuance for ever; for after they are once cut, they will grow again

M. 38 Eliz. B. R. Cro. 1. part, Hoe and Taylors Case.

gain *ex stipitibus*, and so they may be well granted by Copy.

P. 43 Eliz.
B.R. Sands
and Darcie's
Case, Cro. 1.
part, acc.

In Trover and Conversion of 20 Loads of Tithe-Hay, the onely Question was, Whether Tithes were grantable by Copy. It was objected they were not, because it is against the Nature of Tithes, and none could have a property in them before the Council of *Lateran*, and therefore it was impossible to have any Custome so to grant them. But it was Resolved, That they might be granted by Copy, if there had been a Custome time out of mind so to grant them.

39 H.6.9.b.
Vid. M. 11
Jac. Moore
and Good-
greave's
Case, Cro. 2.
part:
Coke 11.
part, Sir
Henry Ne-
vil's Case.
M. 37 Eliz.
B. R. Sir
John Bourn's
Case, acc.

One Manor may be holden of another Manor, and may be demiseable by Copy of Court-Roll, and there may be Customary Tenants, according to the Custome of the Manor; and so it was said, That a Market or a Fair, although they are things of Priviledge and Liberty onely, yet because they might be appendant unto or parcel of a Manor, or used with a Manor and Lands, that an Estate might be granted of them by Copy of Court-Roll.

S E C T. XVIII.

What Acts or things are inseparable, and must be done by the Copy-holder himself; and what acts and where may be done by his Attorney.

A Copy-holder, notwithstanding that generally and according to the Custom of the Manor he hath an Estate of Inheritance in his Copy-hold-lands, viz. *secundum consuetudinem Manerii*; yet it hath this Qualification, that it is *ad voluntatem Domini*: and in that respect, upon the Original Grants of such Estates, the Lords of Manors did reserve unto themselves certain Duties and Services and Suits to be done by their Copy-holders; some of which were so inseparable to the person of the Copy-holder, that they could not be done by any other person; others were such as concerned and had respect both to the Lord for his good, and the good of the Manor, as those which concerned the particular good of the Copy-holders themselves, or the Lands which they held of the Lord.

The principal Duty inseparably to be

Co. 9. part,
in Comb's
Case.

be done to the person of the Lord, and by his Copy-holder, is his doing of Fealty, which upon every Admittance he is to do to the Lord, for that is especially mentioned in the Copy granted by the Lord in these words, *viz. Dat. Domino pro Fine, & fecit Domino fidelitatem*: and Fealty cannot be done but in person, and not by an Attorney. And although (as Mr. *Listleton* saith) Fealty may be taken by the Steward of the Court of the Lord of the Manor, yet it is done to the Lord himself, and it must be done by the Copy-holder himself in person.

A Copy-holder may take an Estate in the Copy-hold by the Surrender of another Copy-holder into the hands of two Tenants of the Manor by Custome, (as before is declared.) But then this Surrender must be presented in Court, and he to whose Use the Surrender was made must personally appear in Court, and be there admitted to the Land; and he cannot be admitted by Attorney.

The Suit and Service which is to be done in the Court of the Lord by his Copy-holder must be done in person, and not by another for him; and it is to be done upon his Oath, and a man cannot swear

swear by Attorney; and therefore he cannot make an Attorney to do his Suit and Service, but the same must be done by him in person.

Again, If a Copy-holder, upon Notice given him of the special day of holding the Lord's Court, and being summoned to appear and to do his Suit and Service, shall willfully neglect, or refuse to appear and do his Suit, it is a Forfeiture of his Copy-hold: and therefore such Suits and Services cannot be done by Attorney, but in proper person.

A Copy-holder of a Manor of the Earl of *Arundel* did surrender his Lands to the Use of his Will, and thereby devised them to his youngest Son and his Heirs, who being in Prison made a Letter of Attorney to *J D*, to pray to be admitted to the Land for his Use, and after such Admittance to surrender the same Lands to the Use of *J S* and his Heirs, to whom he had sold it for the payment of his Debts, who came into Court accordingly, and prayed to be admitted, and make a surrender of the Land to *J S*; all which was done. In this Case it was Resolved by the Justices, That it was no good Admittance, nor

*Tr. 28 Eliz.
in B. R.
the Earl of
Arundel's
Case, Leon.
1. part, 26.*

no

no good Surrender; for that the Heir ought to have come himself in person in Court to take up his Land, and afterwards to surrender it, or otherwise have procured the Lord to appoint his Steward to have gone to the Prison unto him to have been admitted, and afterwards to have surrendered the Lands.

Some particular things a Copy-holder may do by his Attorney; as he may pay his Rent by his Servant or Attorney, or tender it by them; and such Payment and Tender shall be good. So if the Custome of the Manor be, That upon the death of every Copy-holder the Tenant shall pay and render his best Beast unto the Lord for a Heriot, there the Heriot may be paid by the Heir before his Admittance, or by the Executor of the Copy-holder; and such Payment or Tender of it shall be good.

*M. & Jac. in
B. R. Bale's
Case.*

So by an especial Custome within the Manor a Copy-holder may appoint or nominate, in the presence of two Tenants of the Manor or other two sufficient Witnesses, who shall have his Copy-hold-lands after his decease, and also that they may appoint what Fine the Lord shall have for the Admittance of the Tenant,

so

so it be a reasonable Fine; and such Disposition of his Lands and appointment of Fine shall be good by the Custome : But yet after such Disposition made, the party who is to have the Land must in person come into the Lord's Court, and pray to be admitted unto the same. And so was it very lately adjudged in the Court of *Common Pleas*, both for the Point of the Custome, that it was a good Custome, and Admittance.

A Copy-holder dwelling in a Town long distant from the Manor, having Notice of the Court-day when it was to be holden, upon Summons appeared not himself, but appointed his Son his Attorney to appear and do the Services for him for his Copy-hold-lands. In this Case it was holden by the Court, That such a person so appointed might es- soign the Copy-holder, but not do the Services for him, for that none could do the same but the Tenant himself.

*M. 3 Eliz.
E.R. Sir John
Braunche's
Case, Leon. r.
part, 104.*

SECT. XIX.

What Customes within Copy-hold-Manors shall be said to be good and reasonable Customes, and what not.

*Coke 4-part,
ex.*

CUSTOME is the very Soul and life of Copy-hold-estates; for without Custome, or if they break their Customes, they are at the Lord's will, for they hold their Lands *ad voluntatem Domini*, although (as before is said) it be *secundum Consuetudinem Manerii*, &c. But then the Customes must be reasonable, and not unreasonable Customes.

*Coke 1. part
Institut. 59.*

If the Lord doth challenge a Custome within his Manor, to have a Fine of every of his Copy-holders of the said Manor at the alteration or Change of the Lord of the Manor, be it by Alienation, Demise, Death, or otherwise; this is an unreasonable Custome, for by this means his Copy-holders may be oppressed by the Lords by the payment of a multitude of Fines.

*Coke 5-part,
Pennieman's
Case.*

A Custome within a Manor, That every Alienation of Lands within the Manor shall be presented at the next Court hol-

holden for the said Manor, upon pain that such Alienation shall be void, is a good and reasonable Custome; for it is but reasonable that the Lord should know who is his Tenant.

A Copy-holder alledged a Custome within a Manor in *Essex* to be, That all the Tenants within the said Manor had used to cut down Trees, to repair their Copy-hold and Free-hold Tenements within the said Manor, and also to sell their Trees at their pleasures. It was doubted if it was a good Custome: but the better opinion of the Court seemed to be that the Custome was good.

The Custome of a Manor in *Worcester-shire* was, That if any Copy-holder committed Felony, and that the same be presented by 12 Homagers in the Lord's Court, the Tenant should forfeit his Copy-hold. It was presented, that *J S*, a Tenant of the said Manor, had committed Felony at such a time; but that at the Assizes next after he was acquitted of the same: After which the Lord seized the Lands. In this Case it was adjudged, That the Custome was not good, because in judgment of Law, before Conviction or Attainder he was not a Felon.

But

*Pasch. 6 Jac.
in Co. B.
Glascock's
Case. Vid.
Godb. acc.*

*M. 6 Jac.
in Co. B.
Paginton
and Ham's
Case.*

But whether in that Case the Verdict and finding of the Jurors upon the Bill of Indictment agreeing with the finding of the Homagers, that the party had committed Felony, did entitle the Lord to the Copy-hold-lands, notwithstanding the Acquittal of the Jury which was afterwards, was not Resolved.

A Copy-holder did alledge the Custome of the Manor to be, That the Lord might grant Copies in Remainder with the assent of the Tenants, and not otherwise, and that Copies otherwise granted in Remainder should be void. It was said, That this Custome might be good, for it might be so agreed and granted by the Lord at the beginning upon the Creation of the Manor; and that it seemed to be grounded upon the reason of the Common Law, That a Remainder should not be without the assent of the particular Tenant, and to commence with his Estate, and that therefore it was a good Custome. *Quere* the Case, for it was not Resolved, *M. 31 Eliz. in Co. B.*

*M. 31 Eliz.
Co. B. Godb.
140.*

The Custome of a Manor was, That those who claimed Copy-holds by Discent ought to come at the first, second, or third Court, upon Proclamations made, to take

take up their Estates, or else they should be forfeited. A Tenant of the Manor (having Issue inheritable by the Custome beyond the Sea) died : The Proclamations all passed, and the Heir did not return in two years ; but upon his return he prayed to be admitted to the Copy-hold, and profered the Lord his Fine in Court, which the Lord refused to accept of, and to admit the Heir, but seized the Land as forfeited. It was adjudged in this Case, That it was no cause of Forfeiture, because the Heir was beyond the Seas at the time of the Proclamations, and the Lord was at no prejudice, for that, for any thing appeared in the Case, the Lord had taken all the Profits of the Land in the mean time.

*H. 7 Jac. in
Co. B. Cop-
ley's Case.*

The Custome of a Manor was, That every Copy-holder at his death should pay to the Lord his best Beast for a Heriot : A Feme-sole within the Manor Tenant for life took a Husband, and died. It was the opinion of *Dodderidge* in this Case, That although the Custome was good, yet, as this Case was, no Heriot should be paid, because the Wife had not any Goods, by Cattel to pay the same,

*M. 7 Jac. in
Co. B. by
Dodderidge*

A Cu-

*M. 42 Eliz.
B. R. Cro.
1, part,
Parker and
Combleford's
Case.*

*Vid. 3 & 4
Eliz. in Co. B.
Wilson and
Wife's Case,
Moore, acc.*

A Custome of a Manor was said to be, That the Lord had used after the death of every one dying within his Manor to have the best Beast of such a person for a Heriot, and to seize and distrain for it. It was adjudged a void Custome, not good to bind a Stranger : but such a Custome to extend to, and bind the Tenants of the Manor might be good.

*Pasc. 24 E-
liz. Moore
Vide Skip-
with's Case.
Tr. 33 Eliz.
in Co. B.
Godb. 143.
where the
contrary
seemeth to
be adjudg-
ed:*

The Custome of a Manor was, *Quòd quilibet tenens per Copiam psterit dimittere terras suas* for life, in Fee, or otherwise; and that a Woman *Coopert a viro poterit devisare* her Copy-hold-lands to any other, or to her Husband, by the assent of the Husband. In this Case the Court held, That the Custome was not unreasonable ; but because it was *poterit devisare*, where it ought to have been alledged *usi sunt devisare*, for that cause it was said it was not good.

*Pasc. 8 Jac.
in Co. B.
Rapley and
Chaffyn's
Case, acc.*

Note by the whole Court, That if the Custome of a Manor is alledged to be, That the eldest Daughter shall solely inherit the Land, such a Custome may be good : But then such Custome shall be taken strictly, *viz.* That the eldest Sister shall not inherit the Land by force of the said Custome.

It was Resolved by the Justices, That a Custome that a Lessee for years may hold the Land for half a year after his Term ended, is no good Custome: But it was agreed, That the Lord of a Copy-hold might by Custome lease the same for life and 40 years after, and that such a Custome was good.

Vid. Moore's Rep. 3 E. 6.

A Custome was alledged, That all Inhabitants of certain Messuages holden of the Bishop of *S* had used to grind their Corn which they used to spend in their Houses, or should sell, at certain Mills, called *the Bishops Mills in S*, and not elsewhere, without the Licence of the Bishop. It was the opinion of the Justices, That it was a void and unreasonable Custome, to grind all their Corn there which they should sell, &c.

Tr. 14 Jac. in Co. B Harbin and Green's Case, Moore 887.

The Custome of the Manor of *Y* in the County of *Dorset* was, That every Copy-holder might name who should have his Copy-hold, and that the Lord ought to admit the Copy-holder so named at the death of the Nominator. *Quare* if it be a good Custome, because the person nominated hath neither *jus ad rem*, nec *in re*, the Interest being in the Lord, and a man cannot gain an Interest to him-

P. 13 Jac. Ford and Hoskyn's Case, Moore 842.

self from the Lord against the will of the Lord. And therefore it was holden, That where the party in that Case brought an Action against the Lord for denying to admit him to the Copy-hold upon such Nomination, the Action would not lie. But *Quare* that Case as to the Custome, for that in 45 *Eliz. in B. R. in Powell and Peacock's Case* it was adjudged, That a Custome that a Copy-holder in Fee might nominate his Successor, and so in *perpetuum*, was adjudged a good Custome. And *Vid. Brock and Spencer's Case in Hobart 6 and 11.* a Custome that such a Copy-holder in Fee might fell Timber-trees was adjudged a good Custome.

45 *Eliz. B. R. Powell and Peacock's Case.*

Vid. Hob. Reports 6. and 11. Brock and Spencer's Case.

P. 41 *Eliz. B. R. Parman and Bowyer's Case.*

Vid. the same Case in Anderson's 2. part, 125. where it seemeth the Custome was much doubted, if good, or not.

The Custome of a Manor was, That if any Tenant allowed his Lands holden of the Manor by Writing or Feoffment, or devised them, or surrendered them into the hands of the Lord of the Manor to the Use of another, that such Alienation, Feoffment, Devise or Surrender ought to be presented within one Year next after. It was said, It was no good Custome, But the Court ruled the Custome to be good and agreeable to the Law; for that it is reason that the Lord should know, &c. *Tant. Vid. before.*

A Cu-

A Custome was, That a Copy-holder of Inheritance might make a Letter of Attorney to two Joynt-tenants, and severally, to surrender his Copy-hold-lands in Fee to certain Uses after his death. It was Resolved, That the Custome was a void Custome, because by the death of the Copy-holder the Lands were settled in the Heir, and an Authority given to devest him was not good.

*Vod. Willis
and Buck-
nall's Case
in B. R.
Style's re-
ports, 311.*

The Custome of a manor was, That the Land was devisable by Custome for 21 years, paying the treble value of the Rent, and if the Lessee died, that the Term should be to his Heirs, paying for a Fine one year's Rent; and if he assigned it, the Assignee to have it for one year's value of the Rent, and that he might renew the Devise for 3 years value. The Court held all the said Customs to be good and reasonable.

*M. 21 Jac.
Cro. 2. part,
Page's Case.*

The Custome of a Manor was, That if any Copy-hold-tenant did suffer his Mesuage to be ruined for want of Reparations, and the same be presented in Court by the Homage, that such a Tenant should be amerced, and that the Lord had used to distrain the Beasts as well of the Under-tenant as of the Te-

*P. 17 Car. in
B. R. Thorne
and Tyler's
Case.*

nant himself, which were levant and couchant upon the Lands, for such Amercement. It was said, That the Custome was not good, but unreasonable, to distrain a Stranger's Cattel, such as the Under-tenant was. But it was Resolved that the Custome was good: for the Under-tenant, although he was but Tenant for a year, yet he should have all the benefits and priviledges which the Copy-holder himself should have had; & *quisenit Commodum sentire debet & Onus*; and he is distrainable for the Rents and Services due and payable to the Lord; and the Charge lies upon the Land, and not upon the Custome: and therefore the Custome is good.

H. 37 Eliz.
B. R. Brown
and Foster's
Case, Cro. I.
part, acc.

The Custome of a Manor was shewed to be, That any Copy-holder of the Manor may surrender within any place of the Manor into the hands of two Tenants; and if a Surrender be to the Use of a Stranger, without expressing any Estate, that the Lord might grant it in Fee to him to whom the Surrender was made. It was objected, That the Custome was unreasonable, because it is to charge the Land with a greater Estate than the Copy-holder gave. On the other side it was said,
That

That the Custome was good ; for that the Lord is Chancellor in his own Court, and might dispose thereof when the Tenant leaves it uncertain. *Quare* ; for the Case was not Resolved.

SECT. XX.

Where and in what case a Copy-holder or his Lessee upon an Ouster may have and maintain against the Ejector an Ejectione firmæ, and where and in what not.

Proofs.

IN *Ejectione firmæ* the Case was , The Plaintiff was Lessee for years of a Copy-hold ; and the Custome of the Manor was , That a Copy-holder might let the Land for 3 years. It was the opinion of *Anderson* Chief Justice, That the Lessee of a Copy-holder cannot maintain *Ejectione firmæ* ; but if he might, he ought to shew his Lessor's Estate, or his Licence, or a special Custome, to warrant it.

A Copy-holder made a Lease for years by Indenture warranted by the Custome. It was adjudged , That the

G 3

Lessee

*H. 38 Eliz.
C. B. Wells
and Partridge's
Case, Cro.
1. part.*

*M. 14 & 15
Eliz. Leon.
1. part, 4.*

Lessee should maintain *Ejectione firme*; although it was strongly objected, That if it were so, then the Plaintiff should have an *Habere facias possessionem*, and so Copy-holds should be ordered by the Laws of the Land.

P. 33 Eliz.
in B.R. Cole
and Wall's
Case, Leon.
1. part, 328.

The Custome of a Manor was, That if any Copy-holder of Inheritance died, his Heir within the age of 14 years, then the Lord of the Manor might grant the Custody of his Body and Lands to whom he pleased: A Copy-holder of Inheritance died, his Heir within the age of 14 years: The Lord committed the Custody of his Body and Lands to *J S*, who, being ejected, brought a Writ of *Ejectione Custodia* of his Body. It was the opinion of the Justices, That the Action did not lie. But it was agreed in that Case, That an *Ejectione firme* lieth upon a Demise of Copy-hold-lands by Lease for years by the Copy-holder himself, but not upon a Demise by the Lord of the Copy-hold.

Coke 4. part,
26. in Mel-
liche's Case.
M. 8 Jac. in
Co. B. Crane-
ford and
Freshwater's
Case, acc.

Note, It was Resolved by the Justices, That the Lessee of a Copy-holder for a year may maintain an *Ejectione firme*: for inasmuch as his Term is warranted by the Law by force of the general Cu-
stome

Some of the Realm, it is but reason that, if he be ejected, he should have an *Ejectione firme*; for it is a speedy Course for a Copy-holder to gain the possession of the Land against a Stranger, being no more than what right requires to be yielded him for the Recovery of his Estate.

H. 39 Eliz.
Cro. I. part,
Goodwin and
Langhurst's
Case, acc.

SECT. XXI.

What Statutes and Acts of Parliament do extend to Copy-holds and Copy-hold-estates, what not.

SOME things concerning this Division being spoken of in the former part of this Treatise, and some particular Statutes there being mentioned within which Copy-holds are included, and in what not, I shall refer the Reader thereunto; adding onely a few Cases upon some particular Acts not therein mentioned, with the Authorities and Resolutions of the Justices therein. And as concerning within what Statutes Copy-holds are, I shall take and rely upon the general Rule which is put in Sir Edward Coke's 3. part of his Reports, in *Heydon's Case*,

Coke 3. part,
Heydon's
Case.

A Supplement, concerning

viz. When a Statute or Act of Parliament doth alter the Service, Tenure, Interest of the Estate, or other thing in prejudice of the Lord or of the Custome of the Manor, or in prejudice of the Tenant, there the general words of such Statute or Act of Parliament do not extend to Copy-holds or Copy-hold-estates: But when the Statute or Act of parliament is generally made for the good of the Commonweal, and no prejudice can come thereby, by alteration of any Service, Tenure, or Interest, or Custome used within the Manor, there Copy-holds and Copy-hold-estates are within the purview of such Statutes or Acts.

Proofs.

6 Jac. in
Co. B. Coke
Select Cases,
27, 28.

Linl. 16.
sect. 36.

It was Resolved by all the Justices, That no Tenure shall pay for a reasonable Aid to make the eldest Son Knight, or to marry the eldest Daughter, but Tenure by Knight's-Service or Tenure in Socage. Now *Littleton* saith, that all Tenures are either Knight's Service or Socage: And the Statute of *Westm. I. cap. 36.* of reasonable Aid extends onely to such Tenures. The Question then is, Whether

Whether a Copy-hold-Tenure be within that Statute. I shall not determine the Question, for that I do not find it moved in any Book of the Common Law : But although I humbly conceive Copy-holds be within the general words of Mr. *Littleton*, (all Tenures in So-
cage;) yet that the said Statute of *Westm.*
1. cap. 36. doth not extend to Copy-holds.
Quære of it.

The Statute of *Westm. 2. de Donis con-*
ditionalibus I conceive doth not extend to
Copy-holds within the general words
thereof. The words of the Statute are of
Gifts per Chartam datis; and Copy-holds
do not pass by Deeds, but by Surren-
ders. But yet it is conceived, that al-
though they be not within the general
Words of the Statute, yet they are within
the Equity of the said Statute, if there
be a Custome to warrant such Estates.

The Case was, A Copy-holder in Fee
surrendred his Copy-hold-lands to the
Use of his Will; and having a Daugh-
ter born, and his Wife with Child, he
devised part of his said Lands to his Son
or Daughter which his Wife went with,
& *Heredibus suis legitime procreatis*; and
the residue thereof he devised to his
Daugh-

Statute
Westm. 2. de
Donis.

H. 37 Eliz.
in Co. B.
Church and
Wyatt's
Case, Moore
637.

Daughter born, to have to her and the fruit of her Body. One Point in this Case was, What Estate the Daughter born had in the said Copy-hold-lands, if in Tail or not. It was said, It was a Fee-rail in the Daughter born. But it was much doubted if it was an Estate within the said Statute *de donis &c.* But in that Case it was agreed, That Copy-hold might be entailed by Custome co-operating with the said Statute, and if not within the words, yet within the Equity of the said Statute.

Stat. *Prærogat. Regis*, cap. 9 & 10. Co. 8. part, 170. in *Tomerson's Case*. Co. 4. part, 127. in *Beverly's Case*.

The Statute of *Prærogativa Regis* cap. 9 and 10. gives the Lands of Idiots natural to the King, he finding them convenient Maintenance out of the Profits thereof: But if the Idiot hath Copy-hold-lands descended unto him, the King shall not have the Wardship of those Lands therewith, out of the Profits thereof to maintain the Idiot, because the same would be prejudicial to the Lord of the Manor, of whom the Lands are holden by Copy. But yet all Alienations made by an Idiot of his Copy-hold-lands, after Office found, shall be avoided by the King.

Copy-hold-lands are not within the Stat. West. 2; Statute of Westm. 2. cap. 20. of Executions. ^{cap. 20.}

For if a Judgment be had in a Court of Record against a Copy-holder for Debt and Damages, although the Plaintiff may have Execution by *Fieri facias* against his Goods, or a *Capias* against his Body; yet he cannot have Execution of the moyetie of his Copy-holds-lands by *Elegit*, for that Copy-holds-lands are not within that Statute. And so it is, if a Statute-Merchant or Staple be acknowledged by a Copy-holder for the payment of Money at a day certain, which is not payed, his Copy-holds-lands are not extendable for the same. And the reason of these Cases is, because no person can come to Copy-holds but by Admittance of the Lord; and the Lord should thereby lose his Fine which is due upon Admittance, if the party might have the Lands upon Extent delivered unto him.

If Tenant by the Curtesie, or Lessee for years, be of a Manor, and Copy-holds were in his hands by Forfeiture or other

Pasc. 12 Eliz. in Co.B. Moore 94.

other determination, and he bindeth himself in a Statute, and afterwards he deviseth the Copy-hold again; the Copy-hold shall be liable to the Statute. But if a Copy-holder bindeth himself in a Statute-Merchant or Staple, his Copy-hold-lands shall not be extended upon the said Statute, because therein he hath but an Estate at will.

*Stat. 31
H. 8. cap.
13.*

Copy-hold-lands are not within the Statute of 31 H. 8. cap. 13. of Monasteries.

*M. 23 & 26
Eliz. in the
Exchequer,
Leon. 1.
part, 4.*

The Guardians of the Colledge of Oclery, Lords of a Manor, granted Lands for 3 Lives by Copy, according to the Custome of the Manor; afterwards in 30 H. 8. they leased the Lands to J. S, rendring the accustomed Rent, and afterwards surrendred their Colledge to King Hen. 8. And if the Lease, being within one year of the Surrender, was within the Statute or not, was the Question. The case is not adjudg'd, but a *quero* made of it. But in that Case it was adjudged, That if there be Lord of a Copy-holder for life, and the Lord grants a Rent-charge out of his Manor, of which the Copy-hold is parcell, and then the Copy-holder

der doth surrender to the Use of another, who is admitted ; he shall not hold the Lands charged : but if he dieth , so as his Estate is determined , and the Lord grants the Land to another *de novo* to hold by Copy, the new Tenant shall hold the Land charged.

Copy-hold-lands not within the Statute of 32 H. 8. of Rents.

The Lord of a Manor (of which there were Copy-holds) granted a Rent-charge for life, and afterwards made a Feoffment of the Manor to *J S* and his Heirs , who granted a Copy-hold for life : *J S* died , and the Rent was behind, and the Grantee of the Rent distrained for the Arrerages. It was Resolved in that Case , That the possession of the Copy-holder was not chargeable to the Distress, for that the Copy-holder was not in by him who immediately ought to pay the Rent , but in the possession of the Land by the Custome. But *Quare* that Case : and *vide Hill. 18 Eliz. in Co. B. the Earl of Westmorland's Case.* For there the Case was , That the Demesnes of a Manor were usually let for lives

Tr. 27 Eliz. in B.R. Rot. 1201. Sands and Hempstrie's Case, Leon. 2. part, 109.

Hil. 18 Eliz. in Co. B. the Earl of Westmorland's Case, Leon. 3. part, 59.

lives by Copy, and the Lord granted a Rent-charge to *J D pro Consilio impendendo* for life, and afterwards conveyed the Manor to *J N* in Tail: The Rent was behind, and the Grantee of the Rent died, and the Executors of the Grantee distrained for the Arrerages. And there it was adjudged, That the Copy-holder should hold the Lands charged.

Copy-hold-lands not within the Statute of 32 H. 8. of Conditions.

A Copy-holder by Licence made a Lease by Indenture for 21 years rendring Rent: The Lessee covenanted to lay upon the Lands yearly 40 Loads of Dung: Afterwards the Copy-holder surrendered his Lands unto another in Fee, who was admitted. The Point was, If he was such an Assignee as might have Covenant within the Statute of 32 H. 8.

*M. 20 Jac.
in C. B.
Plott and
Plomer's
Case, Cro. I.
part, 17.*

Quere; for the Case was not Resolved.

*Tr. 10 Jac.
in B. R.
Brafier and
Beale's Case,
Telu. 223.*

A Copy-holder by Licence of the Lord made a Lease for 60 years, if he so long lived, rendring rent, upon Condition to re-enter: The Copy-holder surrendered to the Lessor of the Plaintiff in Fee, who demanded the Rent, which was not paid.

ed. It was Resolved in this Case, That the Entry of the Lessor was not lawfull, for that Copy-hold-lands were not within the Statute of *Conditions*, nor the Lessor such an Assignee as the Statute intended: For the Assignee of a Copy-holder being in onely by Custome, is not privy to the Lease made by the first Copy-holder, nor in by him, but may plead his Estate immediately under the Lord.

Note, That in no case, where the King claims a share in the Forfeiture of the Lands, (as in the Statute of 2 *H. 5.* which speaks of Lands forfeited for Heresie, viz. that the King shall have *Annum, diem & vastum*, as he hath for Lands forfeited for Felony) Copy-hold-lands are not within the general words of such Statute; for that in such case, if the Copy-holder committeth Felony, the Copy-hold is presently forfeited to the Lord of the Manor; and therefore out of the words of that Statute, and other the like Statutes.

The Statute of 12 *Eliz. cap. 8.* which speaks of Inquisitions or Offices found by Escheators, doth not extend to Copy-hold-lands:

lands: for although the same are not found within the Inquisitions or Offices, yet the King shall not be entitled to any of the said Copy-hold-lands, but all such Copy-holders shall and may hold and enjoy their Estates and Interests in their said Copy-hold-lands as formerly they might have done; and the Interest of the Copy-hold is preserved by the said Statute, though it be not found by Office after the death of the King's Tenant.

*Vid. 30 Eliz.
in Scaccario,
Leon. 1.
part, 98.*

The Statute of 13 *Eliz. cap. 4.* of Auditors and Registers of the Queen, doth not extend to Copy-holds, for that it should be a great prejudice.

Then for the second part of this Division.

Proofs.

Copy-hold-lands are within the Statute of 4 H. 7. of Fines.

*Vid. 30 Eliz.
Leon. 99.
acc.*

If I levy a Fine of my Copy-hold-lands, and 5 years pass; not onely the Lord is thereby barred as to the Freehold of it and the Inheritance, but I,
who

who am the Copy-holder, am also barred as to my Possession : For the intent of the Statute was to take away all Controversies, & *litibus finem imponere* ; and Contention may as well arise and be about Copy-hold-lands as for Free-hold-lands at the Common Law.

*Vid. Coke 3. part, Sot-
tyn's Case.*

Copy-hold-lands are within the Statute of 29 Eliz. and other Statutes of Recusancy.

A Recusant being convict for not paying of 20 l. a moneth forfeited by the said Statute, a Commission issued out of the *Exchequer* to inquire and seize all his Goods, Lands, Tenements and Hereditaments liable to such seizure : Upon the Return of the Commission it appeared, That some of the Lands returned were Copy-hold-lands. It was a question if they were within the Statute. It was the opinion of the Court, That they were within the Equity of the Statute : for the words of the Statute are, *Lands, Tenements and Hereditaments*, which are forcible words ; and the intention of the Statute was, That the Queen should have all the Goods, and the Recusant by

*Tr. 30 Eliz.
in Scacca-
rio, Saliard
and Everat's
Case, Leon.
1. part, 97.*

the words of the Statute was onely to have the third part of his Lands, which is all that the Law gives him : And if Copy-hold-lands should not be within the Statute, if a Recusant, who had great Possessions onely of Copy-hold-Lands, should go unpunished, it was contrary to the meaning of the Makers of the Act.

Copy-holds are wit hin the Statutes of 13 Eliz. and 1 Jacobi.

*Tr. 15 Jac.
in B. R.
Crisp and
Pear's Case,
Noth. 3433,
and 36.*

It was Resolved by all the Justices, That Copy-hold is within the Statutes of 13 Eliz. and 1 Jacobi, because it is no prejudice to the Lord, for that there ought to be a Composition with the Lord and the Vendee of the Lands; and although the Sale is and ought to be by Indenture, yet the Vendee ought to be admitted by the Lord. 2. The words of the Statute of 13 Eliz. expressly are, That the Commissioners shall dispose of Lands as well Copy as Free; and the said Statutes shall be construed most beneficially for Creditors, i. e. *summamque tribuere*.

There

There are divers other Statutes and Acts of Parliament which extend to Copy-hold-lands, *viz.* 1. The Statute of 5 *Eliz.* cap. 13 & 14. of *Forgery*. 2. The Statutes of 5 *R.* 2. of *Departure out of the Realm*, and 14 *Eliz.* of *Fugitives*. 3. The Statute of 32 *H.* 8. cap. 9. of *Buying of Presented Titles*. All which Statutes extend to Copy-hold-lands; of which I might shew many Cases and Resolutions of the Justices in their several Courts. But because the same would make this Section to be long and tedious, and my Intention was to use much brevity in this Addition and Amplification of what in the former part of this Treatise hath been written concerning *Copy-hold and Customary Estates*; I shall here put an End to the Work.

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